

Introduced 6/3/19
Public hearing 6/17/19
Council action 7/1/19
Executive action n/a
Effective date n/a

County Council of Howard County, Maryland

2019 Legislative Session

Legislative day # 8

BILL NO. 32 2019

Introduced by: Deb Jung

AN ACT requiring that Department of Planning and Zoning designees appear at quasi-judicial Planning Board hearings under oath, under certain circumstances; and generally relating to the Department of Planning and Zoning.

Introduced and read first time June 3, 2019. Ordered posted and hearing scheduled.

By order Jessica Feldmark
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on June 17, 2019.

By order Jessica Feldmark
Jessica Feldmark, Administrator

This Bill was read the third time on July 1, 2019 and Passed , Passed with amendments , Failed .

By order Jessica Feldmark
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2019 at ___ a.m./p.m.

By order _____
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive _____, 2019

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 *Section 1. Be it enacted by the County Council of Howard County, Maryland, that the Howard County*
2 *Code is hereby amended as follows:*

3
4 *By Amending:*

5
6 *Title 16. "Planning, Zoning and Subdivisions and Land Development Regulations"*

7
8 *Subtitle 8. "Department of Planning and Zoning"*

9 *Section 16.801. "The Department of Planning and Zoning."*
10
11

12 **HOWARD COUNTY CODE**

13
14 **Title 16. PLANNING, ZONING AND SUBDIVISIONS AND LAND DEVELOPMENT**
15 **REGULATIONS**

16
17 **Subtitle 8. Department of Planning and Zoning.**
18

19 **Section 16.801. The Department of Planning and Zoning.**

20 (a) *Head.* The Director of Planning and Zoning shall be the head of the Department of Planning
21 and Zoning (formerly known as the Office of Planning and Zoning).

22 (b) *Qualifications of Director of Planning and Zoning.* The Director of Planning and Zoning
23 shall be a trained planner with wide and varied experience in the fields of Planning and
24 Zoning. The Director shall have ten years of experience in urban and regional planning and
25 shall have held a position of administrative leadership and responsibility for at least five years.

26 (c) *Duties and Responsibilities.* The Department of Planning and Zoning shall comprehensively
27 plan for the growth and development of the County, including but not limited to the functions
28 set forth in this subsection.

29 (1) *Comprehensive general plan.* Within five years from the adoption of the comprehensive
30 rezoning plan, the Department of Planning and Zoning shall coordinate the preparation
31 and revision of a general plan for the County, including but not limited to a plan for land
32 use and land conservation and multiyear development plans for transportation, public
33 facilities, water, sewerage, parkland, housing, human services and environmental

1 protection. The general plan shall follow general guidelines promulgated by the Planning
2 Board and adopted by the County Council.

3 (2) *Subdivision rules and regulations:*

4 (i) *Preparation.* The Department of Planning and Zoning shall prepare and periodically
5 revise procedures governing the subdivision of land and land development.

6 (ii) The Department of Planning and Zoning shall prepare recommended language for
7 legislation governing development and the subdivision of land and shall forward this
8 to the County Executive for submission to the County Council.

9 (iii) The Department of Planning and Zoning shall administer and enforce laws and
10 procedures governing the subdivision of land and land development.

11 (3) *Zoning map; zoning regulations:*

12 (i) *Preparation.* The Department of Planning and Zoning shall prepare a
13 comprehensive zoning plan, including a zoning map and zoning regulations. The
14 Department shall submit these to the Planning Board for its recommendations and
15 then to the County Council. The County Council, after public notice, shall hold a
16 public hearing on the comprehensive zoning plan prior to taking final action on it.

17 (ii) *Enforcement.* The Department of Planning and Zoning shall administer and enforce
18 regulations governing zoning, except as otherwise provided by law.

19 (4) *Amendments to comprehensive zoning plan:*

20 (i) *Piecemeal map amendments.* The Department of Planning and Zoning shall receive
21 all petitions for piecemeal amendments to the zoning map. The Department shall
22 accept and review these petitions and prepare findings and recommendations. The
23 Department shall submit these petitions, recommendations and findings to the
24 Planning Board for its recommendations after public notice and then to the Zoning
25 Board. The Zoning Board, after public notice, shall hold a public hearing on the
26 proposed reclassification or amendment prior to taking action.

27 (ii) *Text amendments.* The County Council shall receive all petitions for text
28 amendments to the zoning regulations. The County Council shall submit these

1 petitions to the Department of Planning and Zoning and to the Planning Board for
2 their review and recommendations.

3 (5) *Deadline for traffic studies and all other technical reports for petitions to be considered*
4 *by the Zoning Board, County Council, and the Planning Board.* Any petitioner seeking
5 approval from the Zoning Board, County Council, or the Planning Board in a public
6 hearing shall submit other technical reports to the Department of Planning and Zoning at
7 least two weeks prior to the Planning Board meeting or hearing concerning the petition.
8 Within two weeks of the public hearing, no additional information shall be accepted by
9 the Department of Planning and Zoning. Any other technical reports submitted during
10 Planning Board or Zoning Board deliberations shall result in the granting of at least a two
11 week postponement for the opposing party, upon request. The Zoning Board, County
12 Council, or Planning Board may request any additional information during its
13 deliberation process and grant the parties at least a two-week postponement, upon request.

14 (6) *Deadline for technical staff reports for petitions to be considered by the Zoning Board,*
15 *County Council, and Planning Board.* The Department of Planning and Zoning shall
16 transmit its findings and recommendations concerning petitions to be considered by the
17 Zoning Board, County Council, or the Planning Board to the Planning Board and the
18 general public at least two weeks prior to any required public meeting or hearing. Any
19 initial meeting or hearing shall not be scheduled until all questions raised by the
20 Department of Planning and Zoning in their technical staff report are answered by the
21 petitioner, as determined by the Department of Planning and Zoning. Failure to adhere to
22 this provision will result in a postponement in consideration of the report until the next
23 meeting or hearing.

24 (7) *Other zoning changes.* The Department of Planning and Zoning shall receive all
25 petitions related to zoning matters, such as conditional uses, variances, and
26 nonconforming uses. The Department shall accept and review these applications and
27 petitions and shall transmit them to the Hearing Examiner for the Board of Appeals. For
28 all petitions related to variances in nonresidential districts, conditional uses, and
29 extension, enlargement, or alteration of nonconforming uses, the Department shall
30 prepare findings and recommendations in a technical staff report and shall submit the
31 petitions, findings and recommendations to the Hearing Examiner for the Board of

1 Appeals. The technical staff report shall be made available to the Hearing Examiner and
2 the general public at least two weeks prior to any required public meeting or hearing. If
3 the Hearing Examiner approves a petition subject to an amendment or modification of the
4 petition and the approval is appealed to the Board of Appeals, the Department will prepare
5 and submit to the Board its findings and recommendations concerning the amendment or
6 modification in a technical staff report. The technical staff report shall be made available
7 to the Board of Appeals and the general public at least two weeks prior to any required
8 public meeting or hearing.

9 (8) *Sites for public facilities.* The Department of Planning and Zoning shall assist in the
10 preparation of comprehensive multiyear plans for the siting and development of public
11 facilities, including but not limited to schools, police and fire stations, parks, facilities for
12 the provision of water and the handling of sewage and solid waste, libraries, and
13 government offices.

14 (9) *Historic preservation.* The Department of Planning and Zoning shall be responsible for
15 the administration and enforcement of the County's laws and regulations governing
16 historic preservation.

17 (10) *Capital program.* Each year the Department of Planning and Zoning shall review the
18 proposed capital program. The Department shall prepare comments and
19 recommendations on the impact of the proposed capital program on the County general
20 plan and the growth of the County and submit these comments and recommendations to
21 the County Executive.

22 (11) *Planning Board.* The Director of Planning and Zoning or the Director's designee shall serve
23 as Executive Secretary of the Planning Board and shall attend all meetings of that board. FOR
24 QUASI-JUDICIAL HEARINGS ON MATTERS THAT REQUIRE PLANNING BOARD APPROVAL, THE
25 DIRECTOR OF THE DEPARTMENT OF PLANNING AND ZONING OR THE DIRECTOR'S DESIGNEE
26 SHALL, UNDER OATH AND SUBJECT TO CROSS-EXAMINATION, SUMMARIZE THE DEPARTMENT'S
27 FINDINGS, EXPLAIN THE DEVELOPMENT PROCESS, AND ANSWER ANY RELATED QUESTIONS.

28 (12) *Agricultural preservation.* The Department of Planning and Zoning is responsible for the
29 operation of the County's agricultural land preservation program, pursuant to subtitle 5 of title
30 15 of the Howard County Code.

1 (13) *Other duties and responsibilities.* The Director of Planning and Zoning may assign
2 any administrative and/or supervisory duties and responsibilities to the Deputy Director
3 of Planning and Zoning. The Department of Planning and Zoning is responsible for
4 other functions prescribed by directive of the County Executive or by law.

5
6 ***Section 2. Be it further enacted by the County Council of Howard County, Maryland, that this Act shall***
7 *become effective 61 days after its enactment.*

Amendment / to Council Bill No. 32 - 2019

BY: Opel Jones
David Yungmann

Legislative Day No. 9

Date: July 1, 2019

Amendment No. /

(This amendment removes the cross-examination provision and specifies who may ask questions of DPZ staff.)

On page 4, in line 26, strike "AND SUBJECT TO CROSS EXAMINATION".

On page 4, in line 27, immediately before the period insert "ASKED BY MEMBERS OF THE PLANNING BOARD OR COUNSEL TO THE PLANNING BOARD".

ADOPTED 7/1/19
PASSED
SIGNATURE James Feldmark

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Amendment 1 to Council Bill No. 32 - 2019

BY: Opel Jones
David Yungmann

Legislative Day No. 9

Date: July 1, 2019

Amendment No. 1

(This amendment removes the cross-examination provision and specifies who may ask questions of DPZ staff.)

On page 4, in line 26, strike “AND SUBJECT TO CROSS EXAMINATION”.

On page 4, in line 27, immediately before the period insert “ASKED BY MEMBERS OF THE PLANNING BOARD OR COUNSEL TO THE PLANNING BOARD”.

Sayers, Margery

From: Stuart Kohn <stukohn@verizon.net>
Sent: Wednesday, July 10, 2019 7:47 AM
To: CouncilMail; HOWARD-CITIZEN@yahoogroups.com
Subject: Fwd: [HOWARD-CITIZEN] Re: CB 32

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Council Members,

We received the following suggestions from our HCCA Listserve regarding the possibility of further clarifying the final votes when announced at the Legislative Hearing. This is as a result of the vote on CB32-2019 which caused some confusion.

Stu Kohn
HCCA President

Sent from my iPhone

Begin forwarded message:

From: "joelhurewitz@gmail.com [HOWARD-CITIZEN]" <HOWARD-CITIZEN@yahoogroups.com>
Date: July 10, 2019 at 3:56:52 AM EDT
To: <HOWARD-CITIZEN@yahoogroups.com>
Subject: [HOWARD-CITIZEN] Re: CB 32
Reply-To: HOWARD-CITIZEN@yahoogroups.com

Linda,

I was just now logging on the ListServ to say what you said. Yes, it would be very helpful to the public and apparently even perhaps necessary to the Council too.

The General Assembly makes a long formal statement that the bill having achieved the constitutional majority is declared passed. Need a statement at least such as "the bill passes" or the "amendment fails," etc.

Joel Hurewitz

It would be useful if the Chair would conclude the voting with a statement that bill passes or fails as amended with the tally. Linda Wengel

Posted by: joelhurewitz@gmail.com

NOTE 1: When you choose REPLY, it will go to the entire group.
To send to one member, enter that address in the TO window.

NOTE 2: HCCA does not take responsibility for the content of messages posted
on the listserve; assertions should be verified before placing reliance on
them.

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Sayers, Margery

From: heather.urner@yahoo.com
Sent: Monday, July 1, 2019 8:39 PM
To: CouncilMail
Subject: CR 32-019, CR 33-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Good Evening,

My name is Heather Urner, 10212 Hickory Ridge Rd Apt 203 Columbia MD 21044, Councilwoman Jung and Councilwoman Walsh, thank you for fighting for community voice, including it more will look different, it will not open flood gets, but give the words of the people to be heard to be a part of local government more as we have every right to. The point is for us to not how overwhelming our right to speak could get. I feel the discussions tonight lingered on that and on who from the community would speak and for that to be dwelt on and not see as you heard in campaign, we deserve to be heard and the process should be ours to decide, if the rug happens, we should decide and make that call. Let's look at community voice as a way to get different voices in the room because local government cares to hear in vehicles beyond emails of what we have to say, that should be a driving force to right the ship not to be timid in changing for the better.

Thank you

Heather Urner

Sayers, Margery

From: Rigby, Christiana
Sent: Monday, July 1, 2019 8:08 PM
To: Sayers, Margery
Subject: FW: If you need one reason to support CB 32, allowing citizens to question DPZ staff at Planning Board meetings.....

From: Susan Garber <buzysusan23@yahoo.com>
Sent: Monday, July 1, 2019 5:51 PM
To: Jones, Opel <ojones@howardcountymd.gov>; Yungmann, David <dyungmann@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>; Jung, Deb <djung@howardcountymd.gov>; Walsh, Elizabeth <ewalsh@howardcountymd.gov>
Subject: If you need one reason to support CB 32, allowing citizens to question DPZ staff at Planning Board meetings.....

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Please consider this:

If Savage residents (and individuals and groups concerned with protecting parks and the Little Patuxent River) had been able to question DPZ staff at the FIVE Planning Board hearing dates on the Settlement at Savage Mill from March to November of 2017, EVERYONE's time (citizens, Planning Board members, DPZ staff, etc.) would not have been wasted.

In 16.5 hours of testimony, at the direction of the petitioner's attorney, the chair would not allow any mention or clarification on the land swap which was a critical consideration in the development project. Had protestants been able to ask DPZ staff exactly what land was involved in the swap and the characteristics of the land--which in turn would clarify how much was forested, on steep slopes, etc. the intricate dance of hiding the information could have ended. How can the PB intelligently make a ruling when THEY don't even know what land the development will be on. According to HC Code, one can only apply to develop on property one actually owns.

Had DPZ staff answered critical preliminary questions, rather than replying 'that will all be resolved in the final stages' the truth could have emerged as to who owned what land, why was the developer being allowed to double count land, etc.

No citizen, no employee, no town should ever have to endure the injustice demonstrated in the Planning Board process. **When the chair looks to the petitioner's attorney for legal advice--over and over-- it is clear there is a lack of understanding of the PB's rules and procedures.** (Given that Office of Law staff typically only offer advice to the Board when directly asked, there is no correcting.)

If the Planning Board believes it is their role to approve whatever is placed before them in the Technical Staff Report, then it is obvious why they pay so little attention to testimony. They know how they will vote before the procedure begins and hence need

pay little attention or formulate questions for the staff. **If THEY are not going to ask clarifying questions then it is essential that citizens be able to.**

Please vote to provide this.

Susan Garber

Sayers, Margery

From: Dan O'Leary <danielol12832h@gmail.com>
Sent: Sunday, June 30, 2019 11:45 AM
To: CouncilMail
Cc: Stu Kohn; Ted Mariani; Chris Alleva; Brian England
Subject: Re: Written Testimony re. CB 32-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Council Members,

I just double checked the posted comments on CB 32 - 2019, and my written version attached to the previous email is not there.

The Chair pointed out many times that written testimony is welcome, read and duly considered.

It is discouraging, to find no evidence of this view on the record.

Am i wasting my time?

Dan O'Leary
GHCA

On Thu, Jun 20, 2019 at 1:42 PM Dan O'Leary <danielol12832h@gmail.com> wrote:

Dear Members,

Please see the attached version of my testimony.

Dan O'Leary
GHCA
301 854 9424

Sayers, Margery

From: LISA MARKOVITZ <lmarkovitz@comcast.net>
Sent: Friday, June 28, 2019 1:06 PM
To: CouncilMail
Subject: CB32 - reality vs. goal

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

The amendment proposed by Council Members Jones and Yungmann is not thorough. It does not require the Planning Board Chair to pose any questions to DPZ, that the community members have regarding the TSR. If you are going to disallow cross-examination, even though it is allowed at the Zoning Board level, then at least require the Chair to pose the questions to be answered, to help them "keep order". Because they DO NOT do that now.

I believe the points of view expressed by planning board members to you at your work session regarding CB32 need some clarification. When members of the community have questions, the Planning Board Members do not answer them, nor do they refer to the DPZ to answer them. Sometimes, if a community member mentions a procedural or legal issue the Planning Board Chair will ask the Office of Law to opine, but that's it.

I believe the concern expressed by Mr. Engelke regarding "keeping order" being difficult for him if cross-examination is allowed could be addressed better by having a strong course in procedures for the Chair. Very often it is clear that lack of retained knowledge of the procedures, criteria and what is allowed to be heard, is lacking, enforced in an unbalanced way, and just simply done incorrectly. I am not surprised that adding any other procedural requirement is not desired, but the answer is not to have less transparency and communication. The answer is to educate the person who is supposed to be doing this job correctly.

Thank you,

Lisa Markovitz

Sayers, Margery

From: Stuart Kohn <stukohn@verizon.net>
Sent: Monday, June 24, 2019 12:36 PM
To: CouncilMail; Ball, Calvin
Subject: No Reason Not to Pass CB32-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Council Members and County Executive Ball,

I was sorry I was not able to attend and participate at your Work Session this past Friday as I was out of town. I did watch the video on Saturday morning and again last night. After hearing the testimony from Planning Board (PB) Members and DPZ there was no compelling argument that would prevent the Council to not pass CB32. One has to keep in mind all the PB Members who were in attendance at the Work Session have previously stated their decisions are primarily based on DPZ's Technical Staff Report. This alone is a major reason why those that sign up at a Hearing or Meeting should have the opportunity to ask questions and seek information from DPZ.

We believe our HCCA Testimony was indeed compelling and see no reason not to pass CB32 to include an Amendment which includes questioning DPZ after their presentation not only at quasi judicial proceedings but at Meetings.

Since those that signed up at Zoning Board Hearings can now question DPZ under CB16-2018 there is NO REASON we shouldn't have the same opportunity at the PB.

Hopefully our Testimony will really mean something in an attempt to have a better process and lead to a more level playing field for all participants. By saying "YES" to CB32-2019 will undoubtedly be a major step in the right direction.

Stu Kohn
HCCA President

Sent from my iPhone

Sayers, Margery

From: Christopher J. Alleva <jens151@yahoo.com>
Sent: Monday, June 24, 2019 11:24 AM
To: CouncilMail
Cc: Brian England; Stuart Kohn; Lazdins, Valdis; Gowan, Amy
Subject: CB 32 -2019 Testimony
Attachments: SDP 17-041 Letter 05072019.pdf; Mortimer Case Clemens Crossing.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

TO: The Howard County Council

Attached is a letter to the Planning Board sent by Brian England, a commercial property owner in Columbia that documents negligence, conflicts of interest, and reckless disregard for the County laws.

Mr. England has never received a written decision to his Revisory Request as required by the Administrative Procedures Act of Howard County. No written decision was made on the original petition, again in violation of the Administrative Procedures.

This case illustrates the conduct that precipitated CB 32.

Chris Alleva
Columbia, MD 21044

*British American Building LLC
9577 Berger Rd.
Columbia, MD 21046
410 381- 2700*

May 7, 2019

First Class Mail Postage Prepaid and Via email:lkenny@howardcountymd.gov

Mr. Phil Engelke, Chair
Howard County Maryland Planning Board
c/o Lisa Kenney, Recording Secretary
3430 Court House Drive
Ellicott City, MD 21043

Subject: Revisory Action Requested SDP 17-41 Royal Farms 186 under Administrative Procedure Act/Office of Law Conflict

Dear Mr. Engleke:

At the May 2, 2019 session your Planning Board considered our above captioned Revisory Action. The Planning Board's handling of this request suffers from an extraordinary defect, it fails to comply with the requirements of the Administrative Procedures Act of Howard County ("APA"). This could have been avoided had the Planning Board endeavored to protect the due process rights of all parties and considered this matter properly. From the short hearing it was apparent that neither the Planning Board nor your legal counsel read the request. You committed the same offense as you did in the original proceeding, what could fairly be described as faux due process.

Your legal counsel failed to address the applicable provisions in the APA or the plain declaration preceding the Rules of Procedure that the APA applies to the Planning Board's Procedures in [sic] Addition to the Board's own Rules of Procedure pursuant to Section 2.103 of the APA. Section 2.119(g) of the APA states: "*Reconsideration. Any party to a proceeding may request reconsideration of the final decision and order rendered in the case.*"

The Board's legal counsel plays unique role in the conduct of the proceedings of the Planning Board. During the proceedings, their role is to render advice to the Board to allow them to discharge their duties in a fair and impartial manner to provide equal protection to all parties.

Unfortunately, your legal counsel suffers a conflict as a result of their representation of the Department of Planning and Zoning as they are charged with making recommendations to the Planning Board and the Director acts as your Secretary. These recommendations attest that the petition complies with all rules and regulations. This fatal conflict poisons and delegitimizes all business conducted by the Planning Board. Under the rules, the Department's recommendation is presented first, fundamentally transforming the conflicted counsel from being an impartial advisor to a defender of his other client's work product in the very same proceeding. This conflict must be addressed.

In this Revisory Action Request the Planning Board failed to comply with the requirements to hear these requests as specified in the APA. Instead of following regular order under the Board's rules, (and under a basic practice of fairness and equity) you convened a meeting without any notice to the parties.

May 7, 2019


Revisory Decision and Order Request: SDP 17-41 Royal Farms 186 and Snowden Car Wash

Instead of replying within the 10-day period the Board's legal counsel provided un rebutted advice to the Board depriving all parties the opportunity to be heard in support or against the Revisory Request. It's no wonder this blunder occurred with your legal counsel wearing so many hats in the same case.

The Howard County Planning Board has one job under the Howard County Code §16.900(j)(2)(i), in its "decision making process, the Planning Board shall make decisions with respect to matters submitted to it pursuant to the laws, rules, regulations, and ordinances of the county." Yet the one thing the Planning Board is obligated to do is the very thing you intentionally and unapologetically- refuse to do. Yes, doing it right is more laborious, but my and others' property rights are at stake here.

In closing, we expect that the Revisory Request decision and order will be in writing with citations to specific sections of the County Code that are the basis for the denial as required by the APA. We also urge the Office of Law to eliminate the attorney conflict of interest by assigning separate counsel to the Planning Board and the Department of Planning and Zoning just as they do with other Boards and Commissions.

Sincerely,



Brian England, British American Building LLC

CC: The Columbia Association Board of Directors, c/o Milton Matthews, President
James Parsons, Esq. Lynott, Lynott & Parsons, P.A.
Robert Bell, 9620 Gerwig Lane LLC
James Mazullo, Efficient Properties LLC
Owen Brown Community Association
Wilde Lake Community Association

[CERTIFICATES OF MAILING FOLLOW]

May 7, 2019

Revisory Decision and Order Request: SDP 17-41 Royal Farms 186 and Snowden Car Wash

CERTIFICATES OF MAILING

I HEREBY CERTIFY that on this 7th day of May 2019, a copy of the foregoing letter was mailed, postage prepaid, to Counsel of the petitioner, Two Farms, Inc.

Sang Oh, Esq.
The Law Offices Talkin and Oh
5100 Dorsey Hall Dr.
Ellicott City, MD 21043

Counsel for Two Farms Inc.

I HEREBY CERTIFY that on this 7th day of May 2019, a copy of the foregoing letter was mailed, postage prepaid, to:

David Moore, Esq.
Howard County Office of Law
3450 Courthouse Drive
Ellicott City, Maryland 21043

Counsel for Howard County Department of Planning and Zoning and Counsel for Howard County Planning Board

I HEREBY CERTIFY that on this 7th day of May 2019, a copy of the foregoing letter was mailed, postage prepaid, to:

William Erskine, Esq.
Offit Kurman, Attorney at Law
8171 Maple Lawn Blvd.
Fulton, Maryland 20759

Counsel for Columbia Association, Inc.

I HEREBY CERTIFY that on this 21st day of March 2019, a copy of the foregoing revisory request was sent electronically or mailed postage prepaid, in accordance with section G.1.a of the Planning Board Rules of Procedure to the parties listed. This is a good faith effort to comply as the sign in sheet from the March 7th Meeting was evidently destroyed.

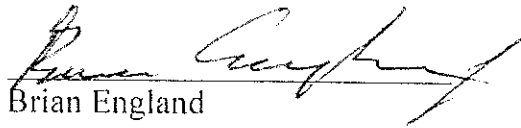
[CERTIFICATE SIGNATURE FOLLOWS]

May 7, 2019

Revisory Decision and Order Request: SDP 17-41 Royal Farms 186 and Snowden Car Wash

Other known parties to the case:

Richard Boulton, Columbia, MD
Jervis Dorton, Columbia, MD
Stuart Kohn, President HCCA
Mary Kay Sigaty, Columbia, MD
Joan Lancos, Columbia, MD
Chip Doetch, President Apple Ford



Brian England

Any person interested in responding to this motion must file a written response with the Planning Board within ten days of the date that this request was filed

MINUTES OF PLANNING BOARD PUBLIC HEARING - P. B. CASE 164

AUGUST 21, 1984 - 7:30 p.m. - BANNEKER ROOM, GEORGE HOWARD BUILDING

Board Members Present: Sue-Ellen Hantman, Chairperson; Howard E. Harrison III, Vice-Chairperson; Gary J. Baham; Helen E. Ruther; J. Gordon Warfield

Staff Present: Thomas G. Harris, Jr., Executive Secretary; Paul T. Johnson, Senior Assistant County Solicitor and Counsel for the Board; Michael W. Antol and Lawrence F. Ripley, Division of Land Development and Zoning Administration; Sarah H. Turnage, Recording Secretary.

Mrs. Hantman opened the hearing and explained the procedure to be followed, specifically noting that the hearing would be in two parts, one to amend the boundaries of 0.60 acres of employment center-commercial land use shown on the Comprehensive Sketch Plan, and the other part for approval of a site development plan for a convenience store. She stated the Board would not decide tonight and there might be a request to continue the hearing. She requested those present to be brief.

Mr. Harris read the petition which was advertised in the Howard County Times and the Sun 30 days prior to the hearing. The applicant had provided copies of the certification of advertisement in the Times but had not received the one from the Sun; this will be submitted later. He also certified that all legal requirements had been met.

Paul T. Johnson, Counsel for the Board, read into the record a list of all legal documents to be incorporated by reference. Others might be introduced, he stated.

Mrs. Hantman requested the petitioner to make its presentation.

Mr. Walter E. Woodford, Jr., Director of Engineering for HRD, was sworn in.

Mr. Robert Levan, attorney for the opponents, 5457 Twin Knolls Road, took the stand and asked as a preliminary matter to address the Board. He felt the hearing was at a difficult time for many of his clients on vacation. They also found real questions and issues which they did not have time to address. He renewed the request for a continuance to permit them to develop their position for full presentation after the Labor Day weekend. He pointed out the notices which Mr. Harris read related to the SDP and amendment of the Comprehensive Sketch Plan; however, he suggested it is appropriate to consider an amendment to the Final Development Plan and the Criteria also. He suggested the notice is not legally sufficient. Furthermore, it was premature to consider the SDP when there are questions in connection with the FDP. The Criteria for locating the use at this location may be different. The request was 1) that the Board consider a continuance, and 2) that the Board direct the appropriate officials to place the proper notices to permit amendments and changes in the FDP as well as the Criteria.

Mrs. Hantman stated they had considered that request but felt the hearing had been posted and notice given so that it would be more confusing not to have it. The Board did agree they would continue the hearing to another date, and she suggested September 5th after the regular Planning Board meeting.

Mr. Levan asked to consult with his clients. After consulting, he stated this would be too soon for them to prepare; more importantly, they requested another evening hearing.

Mrs. Hantman said the Board strongly felt they did not want another night meeting but would be willing to have it at the next regular meeting after Sept. 5th.

Mr. Harris stated this could be on September 19th.

Mr. Walter Woodford, Director of Engineering for HRD (already sworn in), stated they would not object to continuing to Sept. 5th but objected strongly to any continuance beyond that. They felt this is not a new issue; they had been involved in it for months and had had meetings with the community. They recommended the hearing be held over to Sept. 5 but not beyond that.

Mrs. Hantman stated it was the consensus of the Board that it be Sept. 5 and not another night meeting. She was not sure whether they might need to advertise again for changes in the FDP.

Mr. Levan stated their position with regard to the FDP is really part of their motion. He did not see how it was possible to consider the SDP prior to nailing down the FDP.

Mrs. Hantman asked if they didn't have to consider the Comprehensive Sketch Plan before considering the FDP.

Mr. Levan agreed but raised another objection.

Mrs. Hantman remarked that would presume the Comprehensive Sketch Plan would be different from the adopted FDP - she asked if there were not a possibility they could be the same.

Mr. Levan stated they would have to conform, but in terms of details of location and uses they require separate and distinct proceedings.

Mrs. Hantman asked if it were to be different from the Comprehensive Sketch Plan, and since they had not heard the presentation on the sketch plan, she would like to see the presentation first. If they are the same, did they need another hearing on the FDP, she asked.

Mr. Levan understood but would like a longer continuance; however, that is within the Board's discretion. If they approved the change in the Comprehensive Sketch Plan, they would have to change the site location on the FDP and the Criteria. Without doing that, if they did not touch the FDP, they would have an inherent inconsistency. If they did one, they would have to do the other.

Mrs. Hantman thought they had to hear the Comprehensive Sketch Plan first. If they approved the request for the Sketch Plan, it will then conform with the FDP. If they found there are changes necessary to the FDP, they would have to have a hearing on it.

Mr. Levan pointed out that the FDP had been changed but without benefit of a public hearing or notification. That was essentially their argument - there has to be a hearing on the FDP.

Mrs. Hantman asked if the FDP had a hearing.

Mr. Harris replied the FDP does not have a hearing if the proposed land use location is in accordance with the preliminary development plan. A hearing is required when the proposed FDP shows a use of land within the New Town District within 300 feet of an outside boundary that is not in accordance with the preliminary development plan. If the Board would approve the location

based on the Comprehensive Sketch Plan and it is in accordance with the FDP, a separate hearing is not required.

Mrs. Hantman asked which Preliminary Development Plan.

Mr. Harris replied the one in effect now, signed Dec. 20, 1976. He could not find that the regulations say a hearing is required for the FDP because uses and locations are established in the Comprehensive Sketch Plan.

Mr. Levan suggested this has to be considered de novo.

Mrs. Ruther observed it seems they had to hear the case.

Mr. Harris stated the first action to take is on the Comprehensive Sketch Plan and if they denied the location, the site plan is meaningless. If they approved it, then they could consider the other.

Mrs. Ruther asked if they must have a hearing on the SDP.

Mr. Harris replied it is a little cloudy.

Mrs. Ruther stated it seems they could not decide what comes next until they heard this part.

Mr. Walter Woodford, of HRD, then testified before the Board. He suggested they defer any decision on the request of the counsel until later in the hearing; they would address the matter regarding the Comprehensive Sketch Plan.

Mrs. Hantman stated to Mr. Levan that they had tried to take care of the postponement while everyone was there. She thought they would have to make that decision as they got into the hearing. It may be that if there is need to further advertise, it will have time limits.

Mr. Harris stated if they continued it to a specific date and time, they did not have to advertise, but if they waited until after the hearing, then they would have to.

Mrs. Hantman stated there is a possibility of conflict - they would make the decision as they went along. She called on Mr. Woodford.

Mr. Woodford introduced Mr. Gerald Brock, from HRD, Mr. James Lano, Director of Legal Services, and a gentleman from Besche Oil and one from Fedco Systems.

In addition to the documents already introduced, he wishes to add the following: Zoning Regulations of 1971; Amendment No. 1 adopted on May 6, 1971 (the Miller Amendment) which is particularly the basis of tonight's hearing, he stated; the approved Master Comprehensive FDP Criteria adopted on July 1, 1968, and the latest revision of December 1972 referred to in the files of the Office of Planning & Zoning as P-73-19c.

As had been indicated, he stated, HRD submitted a Comprehensive Sketch Plan in the fall of 1972 covering approximately 189 acres in the Village of Hickory Ridge, Sec. 1, Area 2, Clemens Crossing Neighborhood. This sketch plan showed the proposed land uses by acreage and location as required by the regulations for an area west of Martin Rd. south of Owen Brown Rd., and east of Freetown Road. It consisted of a map and text, the Criteria, which is comprised of applicable sections of the Master Criteria adopted by the Planning Board in 1968 and amended in 1972. A public hearing was held on the Comprehensive Sketch Plan on November 15, 1972, by the Planning Board and a decision and order rendered on December 4, 1972. He submitted:

Petitioner's Exhibit No. 1 - copy of the December Order and copy of an approval letter sent to HRD by Planning Board.

Petitioner's Exhibit No. 2 - Map showing an area with access off Quarterstaff Rd, southwest of the site covered by the petition, representing the site that was part of P.B. Case 54. This exhibit indicates the change in location from that on the Comprehensive Sketch Plan in 1972. The Decision & Order adopted land uses and text criteria for the entire area covered by the Comprehensive Sketch Plan. It did not include the present location of the neighborhood center.

Petitioner's Exhibit No. 3 - Preliminary Subdivision Plan, P-73-19, covering 175.5 acres. Mr. Woodford posted the plan and pointed out the approx. 0.6 acre neighborhood center site.

Mrs. Ruther asked if this was a preliminary subdivision plan.

Mr. Woodford responded it was the Comprehensive Sketch Plan required by regulations. He reviewed the steps required. The only difference between the final development plan and comprehensive sketch plan is that land uses are by metes and bounds. The criteria in the FDP is that which was approved in the comprehensive sketch plan.

Mrs. Ruther asked what was the date of this preliminary plan.

Mr. Woodford stated this preliminary subdivision plan was presented to the Planning Board for comments, which is unusual. During the comprehensive sketch plan stage there were several major issues - road patterns, location of the elementary school site, etc. which was proposed under the comprehensive sketch plan. There were efforts to try to resolve those which were reflected in the preliminary subdivision plan. The preliminary sketch plan was approved on March 30, 1973. The final subdivision plan and the final development plan, Phase 136, Part I, was also approved by the Board on May 16, 1973. At that time the school site still had not been resolved. The position of the Dept. of Education was that they were satisfied that the 14 acres at the intersection of Quarterstaff and Martin Roads provided them with the flexibility, and the other site would be utilized for a neighborhood center and community center. The preliminary subdivision plan was approved without the detail within that 14 acres. So the FDP only covered 171 acres of the 185, leaving 14 acres still to be covered. The final resolution of that school site did not come about until the fall of 1973, five or six months after the adoption of the FDP. However, the FDP approved by the Planning Board on May 16 and recorded on May 18, 1973, included the full criteria for the entire acreage, including land uses. He introduced the following exhibits:

Petitioner's

- Exhibit No. 4: Approval letter for preliminary subdivision plan
- " 5: Approval letter for final development plan, Phase 136, Part I
- " 6: FDP 136, Part I
- " 7: Section 7.c.1. of the Master Criteria (which he read)
- " 8: Copy of zoning regulations from 1971 in effect at the time and the section dealing with permitted land uses in B-1 and SC districts.

Mr. Woodford continued. The next step was the Final Development Plan Phase 136, Part II, which covered the 14 acres which were excluded in the first part. The school site was finalized and the criteria had already been recorded under Part I so that criteria for this phase was recorded in Phase 136 Part I. This was added at the requirement of OPZ. He entered the following:

Exhibit No. 9: FDP, Phase 136, Part II, recorded March 28, 1974.

(Mr. Woodford's testimony, continued):

That culminated the zoning process in New Town, he stated.

Mrs. Ruther asked if it were unusual to separate the map submission from criteria.

Mr. Woodford answered it has happened before. This was an unusual situation. He then addressed what is known as the "Miller Amendment" which was Amendment No. 1 to the 1971 zoning regulation changes. The present zoning regulations have Section 119.c.8 and in 1971 it was section 17.037.e. These were the subject of a public hearing in Feb. 1971 and were adopted on May 6, 1971, to be effective on June 1, 1971. They require a comprehensive sketch plan which was defined as a map at a certain scale and text

TAPE 2

The intent of the Miller Amendment, Mr. Woodford continued, was to provide an opportunity for a public hearing somewhere along the way. If held then, it did not have to be held subsequently, as long as there was no change. Therefore, their conclusion in this case is that this public hearing tonight is necessary only because at the time of the comprehensive sketch plan a public hearing was held, but the location is different for the land uses from that subsequently recorded on the FDP. He then offered testimony indicating their feeling that this is also a technicality:

Exhibit No. 9: Part II of Phase 136

Exhibit No. 10: Letter from Mr. Lano of HRD to Paul Johnson regarding HRD's position as to the authority of the Planning Bd.

From the beginning, Mr. Woodford stated, they thought the intent of the Miller Amendment was to provide public input, particularly for non-New Town residents, and they believe that in this case the intent of the amendment has been met. He introduced:

Exhibit No. 11: Map of Atholton Manor

Exhibit No. 12: Map of Clemens Crossing Neighborhood, at scale 1" = 400'.

Mr. Woodford reviewed the boundaries of Clemens Crossing neighborhood shown on the map, with the outparcels within the neighborhood. At the time of these proceedings Atholton Manor was zoned R-20, which it still is. Land to the south was R-40 and is now R-12. Land between two NT parcels was R-40 and is now R-12; to the north was R-40 which is now R-20. Basically the residential character of the outparcels is the same except for greater densities in some areas.

Records show there was intensive involvement with non-New Town residents, primarily of Atholton Manor and Owen Brown Road. In Planning Board Case 54, three or four residents gave testimony. Letters have been presented to the Office of Planning & Zoning by HRD and the residents. Suggestions have been addressed concerning: lotting, particularly patio lotting; land uses and landscaping and fencing, among others, as well as the road network. He introduced the following exhibits:

Exhibit No. 13: letter dated May 1, 1973 to the Planning Board from Charles Lyons and Edward H. Livesay, both of Atholton Manor, regarding the entrance, which they requested be moved to the south, which could not be done.

Letter from Doug MacGregor to Mr. Charles Lyons dated May 16, 1973.

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With respect to New Town residents, Mr. Woodford stated that when a FDP and final subdivision plan are adopted, these matters have all been discussed, according to the regulations of a planned community. They contended that the intent of the Miller amendment was met through the process which was followed and what they were now faced with is only a technicality.

Mr. Woodford addressed the Columbia concept itself. Each neighborhood has an elementary school, commercial and neighborhood center, all adjacent to one another, to meet the immediate needs of the neighborhood. This has been a basic concept from the beginning. It is based upon population, which is somewhere around 5,000 people in the neighborhood, excluding non-New-Town land.

Mrs. Hantman asked if Mr. Woodford knew the population of the area in question.

Mr. Woodford replied no, he did not. He posted a map which he entered as

Exhibit No. 14: showing neighborhood centers in Columbia, scale 1" = 800'

He stated they had shown neighborhood centers recorded to date, convenience stores and day care centers and other uses yet to be developed. There are presently in existence 6 convenience stores, one under construction. There is one employment center-commercial. A WaWa store on Hickory Ridge Road, and a convenience store in Bryant Woods, which once served food but this was not economical. These sites are related to population and not to distance from each other.

Mr. Baham asked what are the criteria for location of these.

Mr. Woodford stated first, there would be an elementary school, neighborhood center and community center adjacent to each other. The big question is where the elementary school will go. It has to be compatible with Dept. of Education requirements and approved by the State. In response to Mr. Baham's question, he stated he believed there is sufficient population.

Mrs. Ruther noted there are only 6 and obviously several neighborhoods have not been able to sustain one.

Mr. Woodford stated that is because of market demand. Example - in Hawthorn there will be a day care center. Someone came forward and said they would like to put in a day care center. He introduced

Exhibit No. 15: Letter dated Aug 3, 1974 relating to covenants associates with the deed.

Mr. Woodford then addressed the subject of traffic. Martin Road is shown as a major collector. He reviewed proposed extension of Martin Rd. to the north. The Design Manual shows a major collector carrying 1500 to 6,000 vehicles per day. At the time of the comprehensive sketch plan, HRD had a traffic study made based on projected traffic count of approximately 5300 vpd, assuming a road was closed when the new entrance was constructed. If that is not closed, the study gave a count of 4560 vpd. Recently a study by DeLeuw Cather determined that 4800 vpd would use Martin Road. These are predicated on full development of the area. Mr. Woodford also suggested that traffic on Martin Rd. will not increase as a result of the convenience center. People are now using Bradley Lane as a cut off; there will be more as congestion on Owen Brown Road and 29 increased until the interchange is built, when Bradley Lane will be closed. Although traffic has and will increase this is because of congestion and not because of this proposed facility.

There are four peak periods for convenience centers: early morning; around noon; 4:30 to 5:30; and later around 9:00 to 10:30. In NT there are many combined trips.

(Mr. Woodford's testimony continued)

Combined trips mean stopping at a store when making another trip. An average single family household generates 9 trips per day. In addition, there is a pathway system which is used to some extent. In conclusion, the fact that it is a neighborhood center plan was already considered at the time the traffic studies were made.

With regard to parking, Mr. Woodford stated, the regulations and FDP state the parking requirements. This convenience store will have to provide parking on site to serve that use. There will be relatively short stays by people coming in and out. There is now parking on Martin Road associated with the swimming pool.

Regarding the entrance location, this is dictated by the Design Manual. Health requirements are not specified in the FDP, but must conform to Health Dept. regulations. Landscaping is a requirement of the FDP criteria; HRD has landscaping requirements more stringent than those of Howard Co. There has been extensive discussion with the Village Bd. and Architectural Committee.

In summary, Mr. Woodford stated, the FDP process has been interpreted over the last 10-11 years. A hearing is required at some point, and if that takes place, one is not required later. The intent of the regulations was met through involvement of non-New Town residents, and development has all occurred in the last ten years on the basis of action by the Planning Board. Land uses in the area are the same. There is no other location within the neighborhood available for this particular use. Therefore, Mr. Woodford requested that the amended comprehensive sketch plan be approved; that the FDP remain as recorded; and that the SDP be approved as presented.

Mr. Larry Ripley, Planner with the Office of Planning and Zoning, was sworn in and stated the plan was submitted and sent out on July 17th to reviewing agencies which have all submitted it back with either "no comment" or approved as submitted for land use only.

Mrs. Hantman asked for questions and stated the Board would consider the comprehensive sketch plan.

RECESS -9:25-9:35

Following the recess, Mrs. Hantman reopened the meeting and called the following;from the speakers' list:

Mr. Levan, attorney for protestants, 5456 Twin Knolls Road, Columbia. Mr. Levan stated a number of people will withhold their testimony until Sept. 5th. There are a lot of documents introduced by HRD which they would like to review. He raised the following points:

They disagreed most heartily with the sentiments expressed by the applicant that this is a technical matter. The only hearing held was on the comprehensive sketch plan which identified the commercial center at a location more than 600 ft. from the current proposed location. It was submitted at the time that the criteria had not been changed. That was the only public hearing. With reference to Petitioners' Exhibit 13, letters to indicate the community was involved, they do not know how that involvement took place - certainly not in a public hearing, or property being posted or in terms of notice. To call that a technicality is untrue in the practical as well as the legal sense.

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The fact is, Mr. Levan continued, in considering this comprehensive sketch plan, it seems the Planning Board must take into account the fact that the criteria at that time dealt with a site we are not dealing with today - and the preliminary plan later moved the site. It took upon itself the criteria previously submitted as part of the comprehensive sketch plan. This piece of property has never had a public hearing or been considered in terms of the criteria. The applicant says they approved the criteria in advance - and talked to people and got a couple of letters. That is supposed to be satisfactory. It may be - and of course, the applicant puts forward the fact that the plan calls for an employment site and this is the only site left, so we should have it here. As far as I am concerned, the fact is no one has analyzed the criteria which you have in front of you by public hearing in terms of the site.

It may be, Mr. Levan continued, that HRD, in 1972 or 1973, made efforts to analyze the site with non-New Town residents - but it did not - but we submit this constitutes a change from the comprehensive sketch plan and it does not make sense to consider a general change without considering the specifics. The new location affects adjacent property owners differently from the original sketch plan - it is only 30 feet from the nearest residence. It seemed it makes sense to look at this property in terms of the criteria. In addition, the concept of a convenience store has changed significantly. There is in this proposal a fast food element which was not present 10 years ago. The fact there are sit-down customers means the traffic patterns will certainly be different. The citizens ask that you consider the proposal in 1984 terms rather than 1969,

Mr. Levan yielded time to those who could not return on the 5th.

TAPE 3

Ms. Pat Linblad, Chairperson of the Hickory Ridge Village Board, was sworn in and submitted:

Protestants' Exhibit No. 1: map sent to Hickory Ridge Board last week from OPZ entitled "Original Comprehensive Sketch Plan" dated Sept. 1972, received by Division of Land Development Oct. 10, 1972.

Ms. Lindblad stated that the Village Board, after reviewing the Sept. 1972 comprehensive sketch plan, believes the original location of the commercial lot was good planning because 1) the location provided reasonable traffic patterns and lot coverage; 2) the site provided a good buffer from the residential community; and 3) the topography allowed for minimal impact on the neighborhood. The site now proposed is inadequate because it allows poor ingress and egress, limited traffic visibility and would create hazards; furthermore, the topography of this parcel is the highest in the surrounding neighborhood and would have a large impact. The Clemens Crossing Board has a history of supporting good planning. This is not good planning; it is simply settling for what is left. There should be a public process; they felt they are now faced with foregone conclusions. Mr. Linblad also stated that the second portion of tonight's hearing presumes that the sketch plan will be approved. Besche Oil has already decided to build and has submitted a SDP. They did not have the opportunity to testify in the 1970's; but in 1984 the circumstances have pushed the Planning Board into a tight corner. Nevertheless, the Hickory Ridge Board asks the Planning Board to deny the location of the commercial lot as proposed. She submitted written testimony as

Protestants' Exhibit No. 2

Mr. James Wu, 10346 Tailcoat Way, was sworn in and addressed three issues:
 1) adverse effect of change in location on surrounding properties. In his opinion the request for an amended comprehensive sketch plan should not be granted because the change will adversely affect surrounding properties. He felt the intent of the 1972 Planning Board resolution has not been adequately addressed. The resolution on Nov. 15, 1974, where the Planning Board approved the comprehensive sketch plan for a convenience store, was based on the assumption that the plan would not adversely affect surrounding properties or public health, safety, security, morals or general welfare or create a traffic hazard. The proposed change will causes adverse impacts on surrounding properties due to

- a) the close proximity of residential properties;
- b) the placement of the entrance driveway at a location which will create traffic hazards because of line of sight; and
- c) elevation of proposed site relative to surrounding properties.

He referred to Mr. Woodford's remarks regarding the Columbia concept. The fact remains there are three convenience stores within a 2-mile radius. Reagrardless of the fact that two of these are not in Columbia, they serve surrounding community.

He referred to a letter of Aug 7, 1984, to Mr. Thomas G. Harris, Jr., from Walter E. Woodford, Jr. and Michael Besche of Besche Oil Co. In this letter Messrs Woodford and Besche refer to certain deed restrictions and controls which will be applicable. They state "in light of the agreements reached... and the existing controls, we believe concerns.... have been adequately addressed." Mr. Wu did not think they were adequately addressed. It is true negotiations were held by HRD, Besche Oil and representatives of the community. In fact, a meeting was held on April 12, 1984, to discuss specific agenda items and agree to agree or disagree. In his opinion, the citizens agreed to disagree. They discussed the cooking and inside seating, which are unacceptable to the community. The evening ended with no resolution. He requested continuance to an evening meeting beyond Sept. 5. He also reiterated the change in location represents a substantial change due to the major impact on surrounding properties. He recommended the request to amend the comprehensive sketch plan be denied.

Mr. Harrison asked Mr. Wu if his home backs to the subject site.

Mr. Wu replied yes. They moved in in March of 1978.

Mr. Harrison asked what he assumed was going in there.

Mr. Wu assumed a neighborhood center or convenience store without inside seating.

Mr. Harrison continued and asked what led him to believe this.

Mr. Wu replied words from the realtor and the fact that people referred to it as a neighborhood center or employment center. He thought possibly a professional building or convenience store.

Mr. Baham noted he mentioned there were 3 convenience stores in a two-mile radius which would sufficiently supply his needs.

Mr. Wu responded yes,, that 3 stores are more than adequate to supply the needs of the community.

Dr. Jerry Pell, 10310 Tailcoat Way, Columbia, was sworn in and responded to Mr. Woodford's testimony concerning technicality - he reminded the Board millions of dollars is being affected; the fact that Columbia is a planned community, HRD is the very entity they had entrusted with such planning. Referring to traffic, both morning and noon peaks coincide with children going to school. The interest of Besche Corp. is to increase traffic flow to render the operation lucrative. As Mr. Wu pointed out, they had more than enough facilities in the area. He had grave reservations about traffic flow and as for the in-and-out factor, the younger the customer, the longer the period. During the past 11-12 years the development of these homes has occurred. Also, they had the most active swimming pool in Columbia. The fact there is no other available site does not justify this proposed use. Regarding pollution, he has a PhD in Meteorology and was a certified consultant; he knew something about the subject. The opinion of the County Solicitor is the Aug. 1 letter that the Planning Board has no power to regulate hours of operation, noise, odors, etc., is a matter of great concern to the citizens. It becomes all the more important that the petition be denied. As for the control of emissions being regulated by Howard County Laws, under the State laws this facility would not be covered. However, it would be very difficult for them to hire counsel as a recourse. The impact of the odors will also be on the swimming pool. Also volume of trash will increase.

Mr. Harrison asked Dr. Pell when he moved in and was it a new home.

Dr. Pell stated it was new; he moved in approximately a month prior to Dr. Wu. They saw blueprints - not of the convenience store.

Dr. Wu stated he previously lived in Wilde Lake but never imagined fried chicken and donuts (when he moved to his present address).

Mr. Harrison asked if he was aware the property was zoned for a convenience store.

Dr. Wu replied yes, in the context of what he knew a convenience store to be.

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- Mr. Lew Neuwelt, 10331 Tailcoat Way, Columbia - would wait until Sept 5th.
 - Mrs. Rosemary Mortimer, 10222 Westwood Dr., Columbia " " " "
 - Mrs. Anne Bowman, 10221 Bradley Lane, Columbia, " " " "
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Ms. Betty Jesneck, 10222 Bradley Lane, was sworn in and stated she was present because of health concerns. She read a statement as Principal of Clemens Crossing Elementary, concerning the attractiveness of the facility to school children who would be drawn to it.

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- Mr. Roger Stull, 10205 Tanager Lane - would return for next meeting on Sept 5.
 - Ms. Cathy Stefano - 6638 Windsor Court, would return Sept. 5th.
 - Ms. Alice Evans, Hickory Ridge Village Rd., - had to leave.
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Mr. David Claiborne, 10350 Tailcoat Way, Columbia resident for nine years, and one of three residents within 30 feet of the proposed site, was sworn in. He remarked the existing six commercial sites in Columbia all have something in common that the proposed site lacks: all are totally surrounded by New Town zoning. Secondly, all but one, the WaWa in Thunder Hill, are immediately adjacent to high density areas and across the street from residential areas. None are within 30 feet from a residential lot.

The proposed size of the store is 2700 sq. ft. on one floor, which will make it the largest building in the neighborhood except for the school. It is on only a half-acre lot.

Concerning lot size, about three weeks ago a notice appeared in the Columbia

David Claiborne, Continuing:

Flier that the Zoning Board denied permission to Kentucky Fried Chicken to operate on US Route 1 because the lot size was too small. That lot was also 1/2 acre. He noted a store on Rt. 108 is on a 1-acre lot with adjoining commercial and you can't get a car in and out at lunch time. He was not opposed to convenience stores but thought this would be too much and he was opposed to a restaurant in a residential neighborhood.

Mr. Tony Burke, 10321 Lograft, Columbia, was sworn in and stated he had come to listen. He did not live on the street that abuts the proposed store; nevertheless it bothered him a great deal. Mr. Woodford had said the neighborhood concept is based on the needs of the residents. The neighborhood has changed dramatically from 1973; there are many single family dwellings. The needs of the residents have probably changed. We should ask if the residents now want that commercial establishment in their backyard. He did not think so.

The criteria also are nebulous. Is there really enough population to justify another convenience store? With today's mobility, it is easy to get to one of the others.

He doubted there is a need for this store. HRD and Besche Oil are driving it down the throats of the residents.

Mr. Baham asked if he would prefer to drive to Hickory Ridge or Rt. 29 to buy things.

Mr. Burke replied he worked in Washington and had a phone in his office; his wife would call and ask him to pick up something at Highs. He didn't need another convenience store in their neighborhood.

Mr. Baham asked if he objected to the concept in general or just in his neighborhood.

Mr. Burke stated he thought it is not necessary in his neighborhood.

Dr. Jerry Pell (formerly testified) stated they would all like to come back for the continuance of the hearing. He implored the Board to consider an evening hearing, since some people can't attend except in the evening. He suggested the evening of the 5th or 19th.

Mrs. Hantman stated the consensus is they would continue to Sept 5th. If they feel an evening meeting is needed, they would decide at that time. She believed they had accommodated the residents by having this night hearing. And they had spent an inordinate amount of time going to the site and reviewing.

Mr. Woodford felt it was obvious from the testimony there is an interweaving of the sketch plan with the site plan. He thought it necessary for the Board to hear testimony regarding the site plan in order to consider the opposition to the plan. The Board should be able to hear and consider the site plan and testimony in connection with it before they make a decision with regard to the sketch plan.

Mrs. Hantman questioned that. Most of the testimony they had heard had been in opposition to the restaurant and seating. The legal opinions indicate they could reconsider the criteria. Conceivably that means they could say no to the restaurant but yes to the convenience store. You do not need a 2700 sq. ft. building for a convenience store. And Parking would be different, as well as landscaping.

Mr. Woodford agreed insofar as consideration of the site plan is concerned, but believed there needs to be testimony regarding the use and market resources associated with this particular use at this site.

Mrs. Hantman thought the petitioner has the opportunity to address those issues. She had no problem with that.

Mr. Richard Cromley, Division Manager for Quik Shop Stores, Besche Oil Co., was sworn in and testified that when they first investigated the site, before committing themselves to purchase, they had extensive market studies done as to volume and profitability. MPSI of North America and CACI, a company in Roslyn, were chosen to do the studies. Findings of both indicated that the site vis a vis its profitability had every indication of being very successful. Besche Oil contemplates development of this site will cost 1/2 million. You don't make that kind of investment without being very careful. Both studies were done as computer models. The MPSI study was made in September of last year and concluded the site had 1900 potential customers a day.

Mrs. Hantman asked where the study envisioned the (market) area to be.

Mr. Cromley stated it is within 1.5 miles of the site.

Mrs. Hantman asked was this in terms of residents or those travelling through.

Mr. Cromley stated it has nothing to do with traffic. The CACI study in October was based on census data - families within that 1.5 mile radius. It makes no reference to traffic patterns. It uses Gallup polling of people as to their attitudes and manner of shopping and habits in daily conduct of their lives. The CACI study is the one they based their decision on to develop the convenience store. The MPSI study is a general study for retail accounts, including a convenience store and other things. But specifically the CACI study was done for one purpose: a convenience store of their type based on census data and polling. The result was they had no doubt the store would be successful. So, based on their data, they went forward with the site development.

He stated that the store is 2700 sq. ft.; however, the industry standard is 2400 sq. ft., and the trend in the convenience store industry has been to slightly larger stores. Stores currently being built are even larger than theirs. He granted the concept of a convenience store is changing, but their store is not a fast food restaurant - not even really a restaurant - their whole thrust is towards carry-out rather than sit-down. Seating is designed as another convenience, but they only have 26 seats. It does not come close to meeting the definition of a convenience store. All normal items are found in their stores. HRD's covenants in the deed clearly prohibit it from being anything else.

Mr. Cromley stated they operate in four counties and have 3 stores under construction, 2 in Virginia and one in Maryland. The store in Columbia is the same store they build everywhere. This is their prototype.

Mrs. Hantman asked where the stores were.

Mr. Cromwell replied in Anne Arundel Co., Rt. 214; St. Mary's Co., Great Mills Rd.; 2 stores on Rt. 301, one on the border of Prince George's and Charles Counties, and another approximately three miles south of La Plata.

Mrs. Ruther asked if any were within residential communities.

Mr. Cromwell asked if she were familiar with St. Charles. It is small compared to Columbia but is a planned development in excess of 6,000 homes with plans for 10,000 more. It is directly in the middle of it (the store). St. Charles does not

have a village center concept. Commercial sites are scattered. There's was at the entrance to a section which is a collection of single family homes and townhouses.

Mrs. Ruther asked if it were near another convenience store.

Mr. Cromwell stated about 1.5 miles is a 7-11 store, a High's store at a swimming pool in another neighborhood; and a second 7-11 in a 4th neighborhood.

Mrs. Ruther asked for a breakdown of percentages of business.

Mr. Cromwell stated 20% fast food and the rest 80%.

Mrs. Ruther said they expected how many visits a day? 1900?

Mr. Cromwell stated that is their potential. He wished he had brought the computer study. There are 4600 residents within that 1.5 mile, not all within Clemens Crossing.

Mrs. Ruther asked how he saw the impact of traffic.

Mr. Cromwell stated they had used the State of Maryland traffic study 2 years ago which said the opening of a convenience store with a full set of gas pumps, which the present proposed store does not have, would increase traffic by about 30 cars an hour, 26 of which would be attributed to gas.

Mrs. Ruther asked if he thought there would be an increase of 4 cars.

Mr. Cromwell said an increase. He hoped traffic would use their store.

TAPE 4

Mr. Baham stated you have a minor increase in traffic. How can you get three sales a minute?

Mr. Cromwell replied in this study we are saying there are that many people who avail themselves of a convenience store.

Mr. Baham stated most of these are little kids buying penny bugle gum. He asked if Mr. Cromwell were going to submit the study for the Board's review.

Mr. Cromwell stated he would be glad to.

Mr. Baham asked if the responses were in the report.

Mr. Cromwell stated that was confidential information which they would not release to him or anybody. It is a statistical representation of how each one feels. He would be glad to bring it with him on the 5th. But 1900 is the total potential - he did not expect that many people a day.

Mr. Baham stated he knew he had a marketing projection that is a lower number. He asked what that was.

Mr. Cromwell summed up regarding the proposed convenience store. There is no broiler, no pit barbecue; the only emissions are in the form of steam which is 85% make up air, so that it is minimized and also they had taken measures to screen everything which has noise capability. They felt the store was very attractive and the landscaping probably exceeds anything he had seen in Columbia, definitely exceeds anything he had seen on any other commercial site.

33 14
Mrs. Ruther asked if the landscaping were common to their other stores.

Mr. Cromwell replied no, it is not. They had met the requirements of the counties, but this is in consideration of the residents around the site.

Mr. Baham asked for specifics relating to odors. He asked if they had done studies.

Mr. Cromwell replied no. The masonry wall used is all approved by the State and beyond that they had screened the equipment beyond what the State requires. They have exceeded the State's requirements regarding emissions.

Mrs. Hantman thanked those present for attending and stated the hearing on Sept. 5th would begin at approximately 10:30 a.m.

Mr. Harris stated the Board normally meets in the Ellicott Room but they will try to reserve this room (Banneker Rm) so they could move to it.

Mrs. Hantman told those present they could submit testimony in writing and it would become part of the record.

THERE BEING NO FURTHER BUSINESS, THE MEETING ADJOURNED AT 11:15 p.m.

Sayers, Margery

From: Dan O'Leary <danielol12832h@gmail.com>
Sent: Thursday, June 20, 2019 1:43 PM
To: CouncilMail
Cc: Stu Kohn; Ted Mariani; Chris Alleva; Brian England,
Subject: Written Testimony re. CB 32-2019
Attachments: Testimony written DOL 190617.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Members,

Please see the attached version of my testimony.

Dan O'Leary
GHCA
301 854 9424



Greater Highland Crossroads Association

RE: CB 32-2019

June 19, 2019
Howard County Council
Howard County, Maryland

Dear Council Members,

Please accept this written version of my testimony before you on June 17.

GHCA was formed in 2002 to preserve and protect our historic colonial crossroads that dates back to at least 1759. For more information about Highland's history, about us and our accomplishments, please visit our website at <http://highlandmd.org/>

When considering this proposal please keep in mind the power and significance of the Technical Staff Report (TSR) in the many places that it appears in governmental proceeding. It is the equivalent of a well-researched legal brief. 98% of them recommend approval; denial recommendations are as rare as snow in July.

I am a veteran of many appearances in hearings and meetings before Council, The Zoning Board, the PB, the HE, the BOA, and meetings with DPZ over 17 years. I have been advocating for meaningful citizen participation in the process of generating the TSR to little avail. The developers and their representatives are heavily involved from the beginning by nature of the process.

When the TSR is positive for a proposal it is like facing an opponent in a paintball fight who has body armor against a citizen with no armor and impotent weapons. The opponent can make points by using the TSR, but the citizen cannot attack it because there is no one there to cross-examine. The opponent must be able to cross examine a witness who has been sworn in -- just like every other witness.

A governmental employee has nothing to fear because he is only asked to tell the truth as he knows it, and he will surely be protected from irrelevant and immaterial questions by council for the proponent or the Office of Law if present. Additionally, it is routine for governmental employees at all levels to be sworn in, as in the case of appearances before the Zoning Board. Everyone remembers, James Comey with his arm raised before Congress.

I urge you to vote yes on this proposal without substantial amendment and to seriously consider measures to apply it to the proceeding of the Hearing Examiner and the Board of appeals.

Sincerely,

Dan O'Leary,
Chairman of the Board,
GHCA



June 14, 2019

Deb Jung
Howard County Council
George Howard Building
3430 Court House Drive
Ellicott City, MD 21043

Dear Councilmembers:

We, the Board of Directors, Advisory Committee, and staff of the Downtown Columbia Partnership (DTCP), write regarding the recently introduced legislation CB32-2019 "An Act requiring that Department of Planning and Zoning designees appear at quasi-judicial Planning Board hearings under oath, under certain circumstances; and generally relating to the Department of Planning and Zoning," and CB33-2019 "An Act amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions."

Our greatest concern is with CB33-2019. First, we're concerned that you did not engage DTCP or the businesses leading the re-development of Downtown Columbia prior to introducing this legislation. The Downtown Columbia Plan, unanimously passed by the Howard County Council in 2010, provides the framework for revitalizing Downtown Columbia. CB33 opens the door for any group or individual to appeal Planning Board decisions and could result in its exploitation as a stall tactic with deleterious consequences to many stakeholders. The risks of such legislation include:

1. Wasted time and money on behalf of Howard County Government Departments and the parties involved in the delayed project;
2. Potential loss of businesses to surrounding jurisdictions;
3. Loss of CEPPA revenue for the DTCP
4. Lost commercial tax revenue at a time when the County is already experiencing budget constraints.

While CB32 does not have a direct impact on the DTCP, we feel that the legislation is onerous and unfair to Department of Planning and Zoning (DPZ) staff. First, it suggests that they are dishonest and untrustworthy and can only be trusted to tell the truth if they are sworn under oath. From a practical level, it assumes that all DPZ staff be expert on every facet of a project, which is not the case. This proposed legislation could end up requiring multiple staff members to be on hand to answer questions of a technical nature, adding over-time costs to the process.

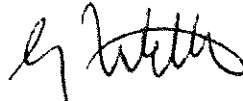
We have no doubt that both of these pieces of legislation are well-intentioned. But if enacted, they will result in unwarranted delays; loss of revenue to the County, nonprofit, and business sectors; and unfairly and unnecessarily burden DPZ and other department staff.

We urge you to withdraw both CB32-2019 and CB33-2019 and encourage you to engage with us on issues that impact Downtown Columbia.

Respectfully,



Phillip Dodge
Executive Director



Greg Fitchitt
Board Chair

CC: Howard County Council
Howard County Executive
Downtown Columbia Partnership Board of Directors and Advisory Committee

Sayers, Margery

From: Leonardo McClarty <lmclarty@howardchamber.com>
Sent: Friday, June 14, 2019 1:27 PM
To: CouncilMail
Subject: CB32 - DPZ Oath Testimony
Attachments: CB32 - DPZ Oath Testimony.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Councilmembers:

Please find attached a letter from the Howard County Chamber stating our opposition to CB32.

Thank you for the opportunity to share our concerns.

Leonardo McClarty
Howard County Chamber



6240 Old Dobbin Lane ■ Suite 110 ■ Columbia, MD 21045

June 14, 2019

Ms. Christiana Rigby
Chair, Howard County Council
George Howard Building
3430 Courthouse Square
Ellicott City, MD 21043

RE: CB 32 – 2019 – AN ACT requiring that Department of Planning and Zoning designees appear at quasi-judicial Planning Board hearings under oath, under certain circumstances; and generally relating to the Department of Planning and Zoning.

Dear Councilwoman Rigby:

Development over the last several years have many in Howard County questioning various land use policies and related decisions by elected and appointed officials. There is mutual agreement in the fact that unbridled development bears impact on our infrastructure and public facilities. While there are varied opinions on the pace of development in Howard County, it is hard to disagree that there are processes and procedures in place for approving what development takes place and where it is located. This process is often led or facilitated by the Department of Planning & Zoning (DPZ).

Most recently, legislation was introduced that if passed would require DPZ designees that appear at public hearings to testify under oath. Some will argue that this enhances our public input process thereby creating greater accountability. This is true to some extent. However, we at the Chamber are concerned at what this does to the overall planning process and the message it sends regarding the approval process. DPZ is often the convener of various reports from numerous Howard County departments. DPZ often takes these reports and recommendations into consideration when authoring an opinion but they are not bound to them. Although DPZ is able understand and articulate the reasoning of some of these departmental analyses, they are not the creator of these findings and are not experts in the related fields.

It is possible this change could require multiple staff from various County agencies to be available to address technical questions which might have departmental and overall budgetary implications. This may also create further confusion for what is already a challenging process for a novice to understand.

Many in the public domain would wonder why DPZ could not just address that which is in the staff report and topics directly related to the review standards in the development regulations. When said and done, this adds more time to an already lengthy process.

Lastly, we are concerned that this legislation sends a message that staff reports are not trusted or that proper due diligence was not completed prior to the Planning Board hearing. It is also our understanding that if the proposed legislation passes, the County Solicitor's Office is unable to represent DPZ staff at Planning Board hearings thereby leaving DPZ staff to sworn testimony and unchecked cross-examination without any legal representation. Furthermore, as the Council is aware, the Director of DPZ, or his designee, serves as the Executive Secretary to the Planning Board and is required to attend every public meeting and hearing in such capacity. To require the Director to provide all testimony before the Planning Board under oath would change his role from that of a public officer in service to the Planning Board to that of a fact witness subject to cross-examination and impeachment. This would represent a fundamental shift in the traditional role of the Director before the Planning Board.

For the reasons outline above, the Howard County Chamber opposes CB 32 and requests an unfavorable vote on this legislation. We would be more than happy to meet with you or members of the Council to discuss this matter further and to work collaboratively to develop mechanisms to remedy any deficiencies you see in our planning process.

Respectfully,



Leonardo McClarty, CCE
President/CEO, Howard County Chamber

CC: Howard County Council
Howard County Executive
Howard County Chamber Board of Directors

Sayers, Margery

From: Leonardo McClarty <lmccclarty@howardchamber.com>
Sent: Friday, June 14, 2019 1:31 PM
To: CouncilMail
Subject: Resubmittal - CB32 - DPZ Oath Testimony
Attachments: CB32 - DPZ Oath Testimony.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Councilmembers:

Please find attached a revised letter pertaining to CB32.

Thanks

Leonardo McClarty



HOWARD COUNTY
CHAMBER



6240 Old Dobbin Lane ■ Suite 110 ■ Columbia, MD 21045

June 14, 2019

Ms. Christiana Rigby
Chair, Howard County Council
George Howard Building
3430 Court House Drive
Ellicott City, MD 21043

RE: CB 32 – 2019 – AN ACT requiring that Department of Planning and Zoning designees appear at quasi-judicial Planning Board hearings under oath, under certain circumstances; and generally relating to the Department of Planning and Zoning.

Dear Councilwoman Rigby:

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Most recently, legislation was introduced that if passed would require DPZ designees that appear at public hearings to testify under oath. Some will argue that this enhances our public input process thereby creating greater accountability. This is true to some extent. However, we at the Chamber are concerned at what this does to the overall planning process and the message it sends regarding the approval process. DPZ is often the convener of various reports from numerous Howard County departments. DPZ often takes these reports and recommendations into consideration when authoring an opinion but they are not bound to them. Although DPZ is able understand and articulate the reasoning of some of these departmental analyses, they are not the creator of these findings and are not experts in the related fields.

It is possible this change could require multiple staff from various County agencies to be available to address technical questions which might have departmental and overall budgetary implications. This may also create further confusion for what is already a challenging process for a novice to understand.

Many in the public domain would wonder why DPZ could not just address that which is in the staff report and topics directly related to the review standards in the development regulations. When said and done, this adds more time to an already lengthy process.

Lastly, we are concerned that this legislation sends a message that staff reports are not trusted or that proper due diligence was not completed prior to the Planning Board hearing. It is also our understanding that if the proposed legislation passes, the County Solicitor's Office is unable to represent DPZ staff at Planning Board hearings thereby leaving DPZ staff to sworn testimony and unchecked cross-examination without any legal representation. Furthermore, as the Council is aware, the Director of DPZ, or his designee, serves as the Executive Secretary to the Planning Board and is required to attend every public meeting and hearing in such capacity. To require the Director to provide all testimony before the Planning Board under oath would change his role from that of a public officer in service to the Planning Board to that of a fact witness subject to cross-examination and impeachment. This would represent a fundamental shift in the traditional role of the Director before the Planning Board.

For the reasons outline above, the Howard County Chamber opposes CB 32 and requests an unfavorable vote on this legislation. We would be more than happy to meet with you or members of the Council to discuss this matter further and to work collaboratively to develop mechanisms to remedy any deficiencies you see in our planning process.

Respectfully,



Leonardo McClarty, CCE
President/CEO, Howard County Chamber

CC: Howard County Council
Howard County Executive
Howard County Chamber Board of Directors

Sayers, Margery

From: Angelica Bailey <abailey@marylandbuilders.org>
Sent: Sunday, June 16, 2019 7:55 PM
To: CouncilMail
Subject: Testimony Signup
Attachments: CB33 MBIA Signup.pdf; CB32 MBIA Signup.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Good Evening,

Please find MBIA signup forms attached for the June 17, 2019 legislative session on CB32 and CB33.

Best,
Angelica Bailey

Angelica Bailey, Esq.
Vice President of Government Affairs
abailey@marylandbuilders.org
Maryland Building Industry Association
11825 W. Market Place
Fulton, MD 20759
Cell: 202-815-4445
Dir: 301-776-6205
Ph: 301-776-MBIA



Advocate | Educate | Network | Build

From: hcgwebsitemailbox@howardcountymd.gov [mailto:hcgwebsitemailbox@howardcountymd.gov]
Sent: Sunday, June 16, 2019 7:47 PM
To: Angelica Bailey
Subject: Testimony Signup

First Name:Angelica
Last Name:Bailey
Address 1:11825 West Market Place
Address 2:
City:Fulton
State:Maryland
Zipcode:20759
Phone:(202) 815-4445

Agenda: CB32-2019
Stance: Against

Speaking for a group?: Yes
Organization Name:
Organization Street:
Organization City:
Organization State: ---Select---
Organization Zip:
Comments:

Testimony is limited to three minutes for an individual or five minutes for the single representative of an organization. If you have prepared written testimony, please provide 7 copies when you testify.

Agenda: CB33-2019
Stance: Against
Speaking for a group?: Yes
Organization Name:
Organization Street:
Organization City:
Organization State: ---Select---
Organization Zip:
Comments:

Testimony is limited to three minutes for an individual or five minutes for the single representative of an organization. If you have prepared written testimony, please provide 7 copies when you testify.



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

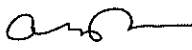
I, Angelica Bailey, have been duly authorized by
(name of individual)

Maryland Building Industry Association to deliver testimony to the
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB32-2019 to express the organization's
(bill or resolution number)

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

Printed Name: Angelica Bailey

Signature: 

Date: June 17, 2019

Organization: Maryland Building Industry Association

Organization Address: Fulton, MD 20759

Fulton, MD 20759

Number of Members: 1,000+

Name of Chair/President: Lori Graf, CEO

This form can be submitted electronically via email to 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.

Sayers, Margery

From: Rigby, Christiana
Sent: Monday, June 17, 2019 10:17 AM
To: Sayers, Margery
Subject: FW: CB 32-2019

Colette Gelwicks
Special Assistant

Councilwoman Christiana Mercer Rigby, District 3
Howard County Council
3430 Court House Drive, Ellicott City, MD 21043
cgelwicks@howardcountymd.gov
410.313.2421



[Sign up for our newsletter!](#)

From: Paul Reville <paul.reville@gmail.com>
Sent: Saturday, June 15, 2019 11:06 PM
To: Walsh, Elizabeth <ewalsh@howardcountymd.gov>; Jung, Deb <djung@howardcountymd.gov>; Yungmann, David <dyungmann@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>; Jones, Opel <ojones@howardcountymd.gov>
Subject: CB 32-2019

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear members of the County Council,

DPZ prepares a Technical Staff Report (TSR) in approval cases and provides a recommendation to the Planning Board based on the criteria for the specific case. The petitioner submits exhibits that propose how the project will meet the criteria. The TSR is available 2 weeks before the approval case is heard by the Planning Board. And the Director or his representative is available to the public those same two weeks to summarize the findings, explain the development process and answer related questions. At the hearing DPZ presents the case to the Planning Board, then the petitioner often makes a presentation after which citizens are invited to testify and to ask questions about the case. The members of the Board are active participants throughout the process, after which they discuss the case in public work session and then vote on the case. The Board is assisted throughout by an attorney from the Office of Law and the Director of Planning and Zoning.

All of which leads me to wonder what problem this legislation solves? It seems better suited to creating problems.

Paul Reville

Sayers, Margery

From: Dan O'Leary <danielol12832h@gmail.com>
Sent: Monday, June 17, 2019 3:05 PM
To: CouncilMail
Subject: Affidavits from GHCA, CGB 32 & 33-2019
Attachments: Group_Affidavit CB 33-2019 B.pdf; Group_Affidavit CB 32-2019.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Please see attached

Thanks,
Dan O'Leary



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


I, Dan O'Leary, have been duly authorized by
(name of individual)

Greater Highland Crossroads Assoc. to deliver testimony to the
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB 32-2019 to express the organization's
(bill or resolution number)

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

Printed Name: Dan O'Leary

Signature: 

Date: June 17, 2019

Organization: Greater Highland Crossroads Assoc.

Organization Address: Highland MD 20777

Highland MD 20777

Number of Members: 60

Name of Chair/President: Charlotte Williams, Pres.

This form can be submitted electronically via email to 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.

Sayers, Margery

From: Angelica Bailey <abailey@marylandbuilders.org>
Sent: Monday, June 17, 2019 3:29 PM
To: Rigby, Christiana; Facchine, Felix; Walsh, Elizabeth; Dvorak, Nicole; Jung, Deb; Williams, China; Jones, Opel; Harris, Michael; Yungmann, David; Knight, Karen; Ball, Calvin; Sidh, Sameer; Lazdins, Valdis; Wimberly, Theo; Feldmark, Jessica
Cc: CouncilMail
Subject: MBIA Testimony for CB32, 33
Attachments: MBIA Opposition Letter to CB32.pdf; MBIA Opposition Letter to CB33.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Good Afternoon,

Please find MBIA's written testimony attached for this evening's hearings on CB32-2019 and CB33-2019.

Thank you,
Angelica Bailey

Angelica Bailey, Esq.
Vice President of Government Affairs
abailey@marylandbuilders.org
Maryland Building Industry Association
11825 W. Market Place
Fulton, MD 20759
Dir: 301-776-6205
Cell: 202-815-4445
Ph: 301-776-MBIA



Advocate | Educate | Network | Build



11825 West Market Place | Fulton, MD 20759 | 301-776-6242

June 17, 2019

Re: OPPOSITION TO CB32 – Requiring the Department of Planning and Zoning to testify under oath at Planning Board hearings

Dear Chairwoman Mercer Rigby and Members of the Howard County Council:

The Howard County Chapter of the Maryland Building Industry Association (“MBIA”) writes in opposition to Council Bill 32, which essentially requires the Department of Planning and Zoning (“DPZ”) to testify under oath and be cross-examined at Planning Board hearings. Assuming the intent of this bill is to ensure DPZ provides accurate information to the Planning Board, it is unnecessary and will be ineffective.

First, this measure implies that there is an existing problem to fix; that DPZ cannot be relied upon to provide honest information to the Planning Board, and needs to be held to a higher standard in its presentations to the Board. MBIA has the utmost respect for the Director and hardworking staff of DPZ, and believes the Department is fair, judicious, and thorough. In fact, the Director of DPZ and Division of Land Development (“DLD”) Reviewer who present projects to the Planning Board are representatives presenting the findings of approximately 25 agencies who have weighed in on the approval of the project; with so many parties involved, proofing, and vetting the project’s specifications, the chances are slim that the “testimony” provided is manipulative or disingenuous. The Department should be given the respect and professional courtesy of presuming their findings, recommendations, and explanations are honest and accurate.

Furthermore, failing to testify honestly under oath comes with criminal consequences. Implementing potentially criminal consequences for a Department which surely works hard and does its best for the County is overly harsh and could have a chilling effect on DPZ’s communications with the Planning Board. The Planning Board should have as much information available as possible to make the best possible decision for the County; DPZ should be empowered to provide recommendations, not disincentivized.

Second, successful prosecution of a claim of perjury – defined in Maryland as knowingly and falsely making a statement of material fact under oath¹ - is rare. To sustain a perjury charge would require proof that the speaker knowingly lied. That is an enormously difficult standard for the State’s Attorney to prove. Moreover, DPZ’s statements at Planning Board hearings are often opinions and recommendations, not objective statements of truth or falsehood. Opinions cannot be objectively proven false. This bill would end up being ineffective in its purpose.

DPZ has little reason to mislead the Planning Board, and should not be subjected to threats of criminal prosecution. This measure is excessive, and the MBIA respectfully requests that you vote NO to Council Bill 32-2019.

Thank you for your attention to this vital issue and your continued support of the local home building industry. If you have any questions about these comments and would like to discuss MBIA’s position further, please do not hesitate to contact me at abailey@marylandbuilders.org or (202) 815-4445.

Best regards,

A handwritten signature in black ink, appearing to read "Angelica Bailey", written over a horizontal line.

Angelica Bailey, Esq., Vice President of Government Affairs

Cc: Councilman David Yungmann
Councilman Opel Jones
Councilmember Elizabeth Walsh
Councilmember Deb Jung

County Executive Calvin Ball
Sameer Sidh, Chief of Staff to the County Executive
Valdis Lazdins, Director of Planning

¹ Maryland Code, Criminal Law § 9-101.

Sayers, Margery

From: Susan Garber <buzysusan23@yahoo.com>
Sent: Monday, June 17, 2019 6:20 PM
To: CouncilMail
Subject: 32,33, 99,100

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear County Council Members,

Although I am presently out of town, I wanted to briefly weigh in on some of the important legislation you are hearing tonight.

CB32-2019 Supporting DPZ representatives to be subject to examination under oath

While the Planning Board was established as the means for the public to express opinions on important development and zoning matters, it no longer seems to perform that function. Nor does it reliably provide good guidance to the Council since it frequently ignores much of the public's testimony and simply accepts the Technical Staff Report from the DPZ representative. This is particularly the case on quasi-judicial hearings. Far too often it appears that technical staff reports have been copy and pasted whole cloth from a developer's application and protestants have no opportunity to question the DPZ representative.

There is a desperate need for citizens to be able to question the department of Planning and Zoning representative for clarification on the facts of the case and on DPZ's position. These responses should be provided under oath, just as citizens are required to provide their testimony under oath. I strongly recommend passage of CB 32 for that reason.

One amendment I would suggest is to also have the petitioner's attorney testify under oath. While in theory the attorney is to ask questions only during a quasi-judicial hearing, the reality is that much testimony is provided under the guise of loaded and leading questions.

Since DPZ representatives testify under oath now in Zoning Board cases, there is no reason not to extend this to Planning Board hearings as well

CB33-2019 Supporting broadening of 'standing' status.

The denial of standing in Planning Board Appeals is an all too frequent occurrence. It appears that the practice has weaponized the prevention of citizen participation.

Anyone who provides testimony or interrogates the petitioner and his witnesses in a Planning Board hearing should be considered a party to the case. The provision to prove that one is aggrieved more than anyone else is aggrieved is as impossible as any case of attempting to prove a negative. This practice must be corrected. I urge all Council Members to support CB 33.

CR 100 - 2019 Against further restrictions on citizen testimony.

I strongly urge you to vote against CR 100 - 2019 as written. I am concerned that the change may make it impossible for a person to speak under several scenarios:

- a.) there was a problem with the sign up process and the individual has no way of knowing it until they have been 'skipped'
- b.) persons who have multiple obligations may elect not to, or be unable to, arrive at the start of a meeting in which their issue is anticipated to occur in the latter portion of a session. If they sign up on line prior to a session and miss when they are called, they would forfeit the ability to speak despite having made quite an effort to be there
- c.) Cutting off registration at the *scheduled* start of a meeting eliminates the opportunity for a person not intending to speak on a particular topic to hear inaccurate information provided in testimony they feel compelled to rebut or correct.

While I understand it is helpful to have a fairly accurate count before the start of a meeting, there are circumstances where having to sign up prior to the *scheduled* start of a meeting would severely suppress citizen input. Just as the Council has circumstances where meetings don't start as scheduled, so too is the life of citizens not always predictable. Vote NO on CR-100 please.

CR 99-2019

I hate to see you in a position where you are told you have no alternative to accepting the chart as written, without delay or modification, as has happened year after year.

There is a significant difference this year, The new enrollment chart appears to indicate for the first time that the total number of students forecasted has now reached the point where we no longer have 'under capacity school capacity' to deal with additional students. In other words while we have heard

for years that redistricting would produce a seat for every child since we have vacancies in the West and in other isolated schools, **this is no longer the case.**

Please dare to challenge “how we’ve always done it” and produce better outcomes for students, families, and tax payers.

Thank you for your consideration of this input. I hope to be able to address additional bills and resolutions before you vote.

Respectfully submitted,

Susan Garber

North Laurel/Savage



Howard County Citizens Association

Since 1961...

The Voice Of The People of Howard County

Date: 17 June 2019

Subject: HCCA Testimony CB32-2019

My name is Stu Kohn and I am the President of the Howard County Citizens Association, HCCA.

We are extremely pleased to state we are by all means definitely in favor of CB32-2019 as we were for CB16 and 71-2018. Councilwoman Deb Jung, my Councilperson has indeed not only heard us, has taken the necessary action and realizes that all her constituents should be able to have the opportunity to question the Department of Planning and Zoning (DPZ) designee to appear at quasi-judicial hearings regarding the Planning Board and strongly suggest to include at any given Meeting whereby a Technical Staff Report has been issued. This would provide the audience the opportunity to ask questions after DPZ's presentation. This is only fair especially because the public is not privy to seeing DPZ's Technical Staff Report until two weeks prior to a given hearing which HCCA a few years ago worked with the Council and was instrumental in seeing this was evoked. This Bill should be passed especially because the Petitioner has been involved with communicating with DPZ for quite some time whereas all other interested parties are seeing the findings for the first time and should have the right to ask DPZ any questions.

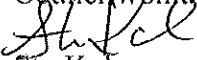
A little background – CB16 which we suggested was introduced by Councilpersons Sigaty and Terrasa to allow the public to question DPZ at Zoning Board Meetings. It passed 5 to 0 as it should have. Since now one can question DPZ at Zoning Board Meetings which I am pleased to announce this is documented in the newly adopted Zoning Board Rules of Procedure it makes no sense to exclude the same opportunity at Planning Board Hearings.

CB71-2018 was introduced by Councilpersons Terrasa and Ball. This Bill was simply correcting an oversight regarding CB16-2018 which we pointed out when we testified on 17 September 2018. It was an extremely important attempt in the right direction which provided a more level playing field for all concerned parties. For some strange reason it was denied. It failed by a 3 to 2 vote with then Councilpersons Ball and Terrasa voting in favor.

We suggest as was written in CB71 that CB32-2019 on page 4, lines 22 thru 27 corrects this most important matter. We would recommend that for clarity you add the following to line 27 after the word "Questions" – by any individual who signs up to testify. We suggest on line 24 after the word "Hearings" you consider adding the words "Meeting whenever a Technical Report is issued." One has to keep in mind that in Zoning Board Hearings CB16 only included Quasi-judicial because this is how they are conducted. The passage of CB32-2019 will enable any interested parties to have DPZ or a representative answer questions regarding their presentation at any given Planning Board hearing or meeting. The non-development community needs some semblance of a more level playing field.

Hopefully our entire County Council will unanimously vote in Favor of CB32. There is absolutely no reason you should not! We want Councilwoman Jung to know our appreciation as it is extremely

refreshing when any elected official attempts to take action on any wrong to make it right.
Councilwoman Jung all we can say is Thank You.


Stu Kohn
HCCA President



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

I, Stu Kohn, have been duly authorized by
(name of individual)

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

County Council regarding CB32-2019 to express the organization's
(bill or resolution number)

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

Printed Name: Stu Kohn

Signature: [Handwritten Signature]

Date: 17 June 2019

Organization: HCCA

Organization Address: ELLICOTT CITY

Number of Members: 500

Name of Chair/President: Stu Kohn

This form can be submitted electronically via email to 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.



11825 West Market Place | Fulton, MD 20759 | 301-776-6242

June 17, 2019

Re: OPPOSITION TO CB32 – Requiring the Department of Planning and Zoning to testify under oath at Planning Board hearings

Dear Chairwoman Mercer Rigby and Members of the Howard County Council:

The Howard County Chapter of the Maryland Building Industry Association (“MBIA”) writes in opposition to Council Bill 32, which essentially requires the Department of Planning and Zoning (“DPZ”) to testify under oath and be cross-examined at Planning Board hearings. Assuming the intent of this bill is to ensure DPZ provides accurate information to the Planning Board, it is unnecessary and will be ineffective.

First, this measure implies that there is an existing problem to fix; that DPZ cannot be relied upon to provide honest information to the Planning Board, and needs to be held to a higher standard in its presentations to the Board. MBIA has the utmost respect for the Director and hardworking staff of DPZ, and believes the Department is fair, judicious, and thorough. In fact, the Director of DPZ and Division of Land Development (“DLD”) Reviewer who present projects to the Planning Board are representatives presenting the findings of approximately 25 agencies who have weighed in on the approval of the project; with so many parties involved, proofing, and vetting the project’s specifications, the chances are slim that the “testimony” provided is manipulative or disingenuous. The Department should be given the respect and professional courtesy of presuming their findings, recommendations, and explanations are honest and accurate.

Furthermore, failing to testify honestly under oath comes with criminal consequences. Implementing potentially criminal consequences for a Department which surely works hard and does its best for the County is overly harsh and could have a chilling effect on DPZ’s communications with the Planning Board. The Planning Board should have as much information available as possible to make the best possible decision for the County; DPZ should be empowered to provide recommendations, not disincentivized.

Second, successful prosecution of a claim of perjury – defined in Maryland as knowingly and falsely making a statement of material fact under oath¹ - is rare. To sustain a perjury charge would require proof that the speaker knowingly lied. That is an enormously difficult standard for the State’s Attorney to prove. Moreover, DPZ’s statements at Planning Board hearings are often opinions and recommendations, not objective statements of truth or falsehood. Opinions cannot be objectively proven false. This bill would end up being ineffective in its purpose.

DPZ has little reason to mislead the Planning Board, and should not be subjected to threats of criminal prosecution. This measure is excessive, and the MBIA respectfully requests that you vote NO to Council Bill 32-2019.

Thank you for your attention to this vital issue and your continued support of the local home building industry. If you have any questions about these comments and would like to discuss MBIA’s position further, please do not hesitate to contact me at abailey@marylandbuilders.org or (202) 815-4445.

Best regards,

Angelica Bailey, Esq., Vice President of Government Affairs

Cc: Councilman David Yungmann
Councilman Opel Jones
Councilmember Elizabeth Walsh
Councilmember Deb Jung

County Executive Calvin Ball
Sameer Sidh, Chief of Staff to the County Executive
Valdis Lazdins, Director of Planning

¹ Maryland Code, Criminal Law § 9-101.



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

I, Angelica Bailey, have been duly authorized by
(name of individual)

Maryland Building Industry Association to deliver testimony to the
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB32-2019 to express the organization's
(bill or resolution number)

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

Printed Name: Angelica Bailey

Signature: 

Date: June 17, 2019

Organization: Maryland Building Industry Association

Organization Address: Fulton, MD 20759

Fulton, MD 20759

Number of Members: 1,000+

Name of Chair/President: Lori Graf, CEO

This form can be submitted electronically via email to 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.

June 17, 2019

CB32 – Support –

Lisa Markovitz President The People's Voice, and VP HCCA

Thank you for this legislation, we believe ~~the~~ procedurally it makes sense for quasi-judicial proceedings to have all those who give testimony do so under oath, all the same, and be subject to questioning, as all are.

Especially with regard to the Planning Board's decision-making proceedings, it is very clear how very much reliance is placed upon the Technical Staff Report, and thus, having questions answered would be advantageous to all.

Both organizations' fully support this Bill.

Thank you.



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

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

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

County Council regarding CB 32 to express the organization's
(bill or resolution number)

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

Printed Name: Lisa Markovitch

Signature: [Handwritten Signature]

Date: 11/7/19

Organization: HCCA

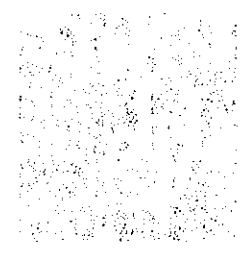
Organization Address: ~~2000~~ PO Box 89
Elizabeth City 21041

Number of Members: 500

Name of Chair/President: SN Kohn

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Bruce A. Harvey
Testimony 06/17/19
Howard County Council
CB32-2019

My name is Bruce Harvey and I reside at 7792 Elmwood Road, Fulton, MD 20759. I have been a Howard County resident since 1978. I am also President and majority owner of Williamsburg Homes based here in Howard County. I am testifying against CB32-2019.

I don't understand the purpose of requiring the Planning and Zoning director or his employees testify under oath before the Planning Board. Both Montgomery and Prince George's Counties who have long standing Planning Boards have a process similar to Howard's current one. The Planning Staff presents and then the public testimony begins. Planning and Zoning employees do not have a financial interest in the projects they review so what incentive do they have to be anything but honest and straightforward? If this legislation is passed, **they will have an incentive to be extraordinarily cautious to avoid a potential legal liability.** I believe that will lead to shorter and more concise reports with less information and certainly nothing that can be challenged. If sworn testimony is taken, both sides (developer and affected residents) will potentially take advantage of misstated information to overturn or appeal a decision. From a County perspective, employees wouldn't want to subject themselves to a potential legal liability? I believe over time that it could be a detriment to hiring qualified individuals.

As a citizen and business owner in Howard County, I encourage you to vote no on this bill.

Thank you for hearing my testimony.



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

I, Dan O'Leary, have been duly authorized by
(name of individual)

Greater Highland Crossroads Assoc. to deliver testimony to the
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB 32-2019 to express the organization's
(bill or resolution number)

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

Printed Name: Dan O'Leary

Signature: _____

Date: June 17, 2019

Organization: Greater Highland Crossroads Assoc.

Organization Address: Highland MD 20777

Highland MD 20777

Number of Members: 60

Name of Chair/President: Charlotte Williams, Pres.

This form can be submitted electronically via email to 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.

Sayers, Margery

From: stukohn@verizon.net
Sent: Friday, May 24, 2019 9:15 PM
To: howard-citizen@yahoogroups.com; CouncilMail; Ball, Calvin
Subject: CB32-2019 a Pre-filed Bill Introduced by Councilperson Deb Jung and Zoning Board Rules of Procedure Updated

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

FYI,

We want to **THANK** Councilperson Deb Jung for taking the time to not only listen to our suggestion but take the necessary action to resolve a major concern. Councilperson Jung has pre-filed legislation – CB32-2019 -- An act requiring that the Department of Planning and Zoning designee appear at quasi-judicial Planning Board hearings under oath, under certain circumstances; and generally relating to the Department of Planning and Zoning see -- <https://apps.howardcountymd.gov/olis/LegislationDetail.aspx?LegislationID=12303>.

The Howard County Citizens Association testified on CB16-2018 which was an act amending the Howard County Code to modify the process for piecemeal map amendments and development plan approvals by the Zoning Board; and generally relating to Zoning Board hearings. This included the DIRECTOR OF THE DEPARTMENT OF PLANNING AND ZONING, OR THE DIRECTOR' S DESIGNEE, SHALL ATTEND A ZONING BOARD PUBLIC HEARING CONCERNING A PETITION FOR PIECEMEAL MAP AMENDMENT OR DEVELOPMENT PLAN AND, UNDER OATH AND SUBJECT TO CROSS-EXAMINATION, SUMMARIZE THE DEPARTMENT'S FINDINGS, EXPLAIN THE DEVELOPMENT PROCESS, AND ANSWER ANY RELATED QUESTIONS.

We realized there was an oversight with CB16-2018 as this did not include the ability for anyone to question the Department of Planning and Zoning regarding Planning Board cases. Thus the introduction of CB71-2018 see -- <http://howardcountyhcca.org/wp-content/uploads/2018/09/HCCA-Testimony-CB-71-2018-DPZ-PB.pdf> which was introduced by Councilpersons Calvin Ball and Jen Terrasa. Unfortunately much to our surprise the proposed Bill failed by 3 to 2 with only Ball and Terrasa recognizing the error.

We see absolutely no reason why CB32-2019 should not pass to correct the oversight and promote a more transparent process regarding quasi-judicial Planning Board cases.

In addition, we have been successful in having the Zoning Board's Rules of Procedure officially updated thanks to Councilpersons Liz Walsh and Deb Jung. Once again progress was made and is very much appreciated. The last time these Rules were updated was in 2002. The Planning Board's Rules of Procedure last updated in 2007 are in the process of being revised as we have been working with the Department of Planning and Zoning.

Stu Kohn
HCCA President