

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. 33-2019

Introduced by:
Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions.

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 9. "Planning Board."*

9 *Section 16.900. "Planning Board."*

10 *Subsection (j) "Duties and Responsibilities."*
11
12

13 **HOWARD COUNTY CODE**

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

17
18 **Subtitle 9. Planning Board**

19
20 **Section 16.900. - Planning Board.**

21 **(2) Decision making:**

22 **(i)** The Planning Board shall make decisions with respect to matters submitted to it pursuant to
23 the laws, rules, regulations, and ordinances of the County.

24 **(ii)** The Planning Board has authority regarding street naming and house numbering pursuant to
25 subtitle 4, "Street Names and House Numbers" of [this] title 16 of the Howard County Code.

26 **(iii)** Any person MEETING THE QUALIFICATIONS IN SUBSECTION IV BELOW **[[specially aggrieved**
27 **by any decision of the Planning Board]], OR [[and]]** a party to the proceedings before THE
28 **PLANNING BOARD [[it]]** may, within 30 days thereof, appeal said decision to the Board of
29 Appeals in accordance with section 501 of the Howard County Charter. **[[For purposes of this**
30 **section the term "any person specially aggrieved" includes but is not limited to a duly**
31 **constituted civic, improvement, or community association provided that such association or**
32 **its members meet the criteria for aggrievement set forth in subsection 16.103(b) of this title.]]**

33 **(IV) A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE,**
34 **OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS**

1 THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY
2 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE
3 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY
4 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION
5 OR DECISION.

6 THIS APPEAL PROVISION FOR PLANNING BOARD CASES DOES NOT GUARANTEE STANDING IN
7 CONTESTED CASES APPEALED TO THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND,
8 WHICH ARE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF STATE LAW.

9

10

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

13

Amendment / to Council Bill No. 33 - 2019

BY: Deb Jung

Legislative Day No. 9

Date: July 1, 2019

Amendment No. 1

(This amendment redefines who has standing to appeal Planning Board decisions and actions.)

On page 1, in line 26, strike “MEETING THE QUALIFICATIONS IN SUBSECTION IV BELOW”.

On page 1, in line 26, after “specially”, insert a closed bracket.

On page 1, in line 27, strike the first set of closed brackets.

On page 1, in line 27, after “[[and]]” insert “WHO HAS PARTICIPATED IN THE HEARING IN PERSON, BY ATTORNEY, OR IN WRITING AS”.

On page 1, in line 29, strike the open brackets.

On page 1, in line 30, insert brackets around “specially”.

On page 1, in line 31, after the first “association”, insert “THAT REPRESENTS ONE OR MORE PROPERTY OWNERS AFFECTED BY THE DECISION.”.

On page 1, in line 31, add open brackets before “provided”.

Strike beginning with line 33 on page 1 through line 8 on page 2.

ADOPTED

7/1/19

FAILED

SIGNATURE

Jessica Johnson

1. The first part of the document is a list of names and titles, including the names of the authors and the titles of their respective works. This list is organized in a structured manner, likely serving as a table of contents or a reference list for the document.

Amendment 1 to Council Bill No. 33 - 2019

BY: Deb Jung

Legislative Day No. 9

Date: July 1, 2019

Amendment No. 1

(This amendment redefines who has standing to appeal Planning Board decisions and actions.)

On page 1, in line 26, strike “MEETING THE QUALIFICATIONS IN SUBSECTION IV BELOW”.

On page 1, in line 26, after “specially”, insert a closed bracket.

On page 1, in line 27, strike the first set of closed brackets.

On page 1, in line 27, after “[[and]]” insert “WHO HAS PARTICIPATED IN THE HEARING IN PERSON, BY ATTORNEY, OR IN WRITING AS”.

On page 1, in line 29, strike the open brackets.

On page 1, in line 30, insert brackets around “specially”.

On page 1, in line 31, after the first “association”, insert “THAT REPRESENTS ONE OR MORE PROPERTY OWNERS AFFECTED BY THE DECISION.”.

On page 1, in line 31, add open brackets before “provided”.

Strike beginning with line 33 on page 1 through line 8 on page 2.

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: joel hurewitz <joelhurewitz@gmail.com>
Sent: Monday, July 1, 2019 11:06 AM
To: CouncilMail
Subject: CB33-2019 Amendment 1 - Support
Attachments: Documentation for Howard County code error June 14, 2014.pdf

[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 write to give my support to Amendment 1 to CB33-2019. It allows anyone who is a party the Planning Board to appeal. This amendment is similar to the approach taken in Montgomery County: http://montgomerycountymd.granicus.com/MapView.php?view_id=136&event_id=5227&meta_id=130598

Deleting the "specifically aggrieved" reference was also the proposal suggested by former Council Administrator Shelia Tolliver in 2014 (see attached email).

Left unresolved is how to address the broken "specifically aggrieved" references in Section 16.1109 and Section 16.1214. However, I have realized these situations are more complicated. In particular, the petitioner who is denied a request by the Director of Planning and Zoning should have an appeal. Yet, there is no hearing in which those who object to a grant or a waiver by the Director to have participated. This will require further thought and discussion of the desired procedures for all affected.

Joel Hurewitz

Howard County, Maryland, Code of Ordinances >> - CODE >> TITLE 16 - PLANNING, ZONING AND SUBDIVISIONS AND LAND DEVELOPMENT REGULATIONS >> SUBTITLE 9. PLANNING BOARD >>

SUBTITLE 9. PLANNING BOARD ^[7]

Sec. 16.900. Planning Board.

Sec. 16.900. Planning Board.

- (a) *General Provisions.* General provisions applicable to this Board are set forth in subtitle 3, "Boards and Commissions," of title 6, "County Executive and the Executive Branch," of the Howard County Code.
- (b) *Number of Members.* The Planning Board shall have five members.
- (c) *Qualifications.* All members of the Planning Board shall be residents of Howard County.
- (d) *Executive Secretary.* The Director of Planning and Zoning or the Director's designee shall serve as Executive Secretary of the Planning Board and shall attend all meetings of the Board.
- (e) *Meetings.* The Planning Board shall hold regular monthly meetings. Special meetings may be held at any time, at the call of the Chair.
- (f) *Records.* The Planning Board shall keep a record of its findings, recommendations, determinations and decisions. The Planning Board shall keep minutes of its proceedings. The records shall be filed with the Department of Planning and Zoning, which shall maintain them.
- (g) *Outside Assistance.* With the approval of the County Executive, the Planning Board may retain legal counsel or consultants as necessary to carry out its function and duties and responsibilities.
- (h) *Studies.* The Planning Board may initiate studies related to the general duties and responsibilities and functions of the Board. For the purpose of conducting such studies, the Board shall have the assistance of the staff of the Department of Planning and Zoning, as may be provided in the budget.
- (i) *Hearings.* Prior to making recommendations to the County Council on adoption of the general plan, the Planning Board shall hold at least one public hearing at which interested persons shall be afforded a reasonable opportunity to be heard regarding the general plan. In addition, prior to making recommendations to the County Council on adoption of comprehensive zoning, the Planning Board shall hold at least one public hearing at which interested persons shall be afforded a reasonable opportunity to be heard regarding the comprehensive zoning. In both cases, at least 30 days' notice of the time and place of the hearing shall be on the County's website. The Planning Board may hold hearings on any matter pending before it and shall hold hearings upon written request of the County Executive or on resolution of the County Council and as required by law and regulations.
- (j) *Duties and Responsibilities.* The Planning Board shall carry out all duties and responsibilities assigned to it by law.

- (1) *Recommendations on Planning and Zoning:*
 - (i) *Recommendations.* The Planning Board shall make recommendations to the County Council and the Zoning Board on all matters relating to:
The Planning and Zoning of the County, the adoption and amendment of regulations regarding the Planning and Zoning of the County, and amendments to the zoning map or zoning regulations.
 - (ii) *Time frame.* The Planning Board shall make its recommendations within a reasonable period of time, but in any event no more than 45 days after it hears the petition unless the Zoning Board or the County Council allow a longer period of time for the Planning Board to make its recommendations.
- (2) *Decision making:*
 - (i) The Planning Board shall make decisions with respect to matters submitted to it pursuant to the laws, rules, regulations, and ordinances of the County.
 - (ii) The Planning Board has authority regarding street naming and house numbering pursuant to subtitle 4, "Street Names and House Numbers" of [this] title 16 of the Howard County Code.
 - (iii) Any person specially aggrieved by any decision of the Planning Board and a party to the proceedings before it may, within 30 days thereof, appeal said decision to the Board of Appeals in accordance with section 501 of the Howard County Charter. For purposes of this section the term "any person specially aggrieved" includes but is not limited to a duly constituted civic, improvement, or community association provided that such association or its members meet the criteria for aggrievement set forth in subsection 16.013(b) of this title.
- (3) *Recommendations on capital programs and capital budgets:*
 - (i) *Recommendations.* Each year the Planning Board shall review the proposed capital program and any new or substantially changed capital project, pursuant to law. It shall prepare comments and recommendations on the impact of the proposed capital program on the County general plan and the growth of the County and submit these comments and recommendations to the County Executive, with a copy to the County Council.
 - (ii) *Time frame.* The proposed capital programs for the following fiscal year shall be submitted to the Planning Board at least two months before the County Executive is required to file the County's proposed capital program. The Planning Board shall submit its comments and recommendations within one month of receiving the proposed programs.
- (4) *General plan guidelines:*
 - (i) *Preparation of guidelines.* Within five years from the adoption of this comprehensive rezoning plan, the Planning Board shall prepare general guidelines to be used by the Department of Planning and Zoning in the preparation and/or revision of the general plan.
 - (ii) *Adoption of guidelines.* The County Council shall adopt the guidelines by resolution prior to the formulation of the general plan utilizing these guidelines.
- (5) *Other recommendations.* At the directive of the County Executive or by resolution of the County Council, the Planning Board shall review and make recommendations on any matter related to planning.

Subject: Code error
From: Christopher J. Alleva (jens151@yahoo.com)
To: earl.adams@dlaplper.com;
Date: Wednesday, June 11, 2014 5:03 PM

More info on the Code error

On Tuesday, June 10, 2014 2:40 PM, "Tolliver, Sheila" <STolliver@howardcountymd.gov> wrote:

Chris (aka Music Man),

We've traced the problem and have referred it to the Office of Law. Not sure if they can correct this through the Code company without legislation, given the history. If not, we'll put in a bill to correct. Thanks for your attentive eye.

Sheila

From: Tolliver, Sheila
Sent: Tuesday, June 10, 2014 2:35 PM
To: Vannoy, James
Cc: Nolan, Margaret Ann; Meyers, Jeff
Subject: Code error

Jim,

A constituent found an error in a reference in the Code. I'm bringing it to your attention, as the Office of Law works with the code company on such matters. If you'd rather we just correct legislatively, let me know.

The problem is the reference to "subsection 16.013(b)" in subsection 16.900 J(2)(iii). Jeff has researched the history and found the following series of actions:

- Subsection 16.900 J(2)(iii) was adopted in CB 13-1990; however, the reference at that time was to "subsection 16.103(b)".
- Apparently at some point, perhaps by a typo, 16.103 was changed to 16.013, which doesn't exist.
- CB 121-1992 repealed and reenacted subsection 16.100 as part of a larger bill. The newly adopted subsection 16.103 (b) does not deal with the subject matter referenced in the

contemporary subsection 16.900 J(2)(iii). The cross-reference in 16.900 was not changed as part of that bill.

• A word search in the current code fails to find any criteria elsewhere in the code for what constitutes an association eligible to be an aggrieved party. We think, therefore, that the entire sentence in subsection 16.900 that erroneously references the non-existent subsection 16.013 (b) should be stricken.

Please let us know how best to remedy.

Sheila Tolliver
Administrator
Howard County Council
410 313-2001

Howard County, Maryland, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> - HOWARD COUNTY CHARTER >> ARTICLE V. BOARD OF APPEALS >>

ARTICLE V. BOARD OF APPEALS ^[3]

Section 501. The County Board of Appeals.

Section 502. Board of Appeals hearing examiner.

Section 501. The County Board of Appeals.

- (a) *Appointment; term; compensation.* The County Board of Appeals shall consist of five registered voters and residents of the County appointed by the Council. Appointees shall serve overlapping terms of five years from the first day of January of the year of their appointments, or until their successors are appointed. Vacancies, except those at the expiration of a term, shall be filled in the same manner as the original appointment and for the unexpired term. No member shall be reappointed after having served eight consecutive years immediately prior to reappointment. No more than three members shall be registered with the same political party. The members of the Board shall be paid at the rate of Twelve Hundred Dollars (\$1,200.00) per year unless such compensation be changed as provided in Section 501(f) of this article. Members of the Board shall receive reasonable and necessary expenses as may be provided in the budget.
- (b) *Powers and functions.* The Board of Appeals may exercise the functions and powers relating to the hearing and deciding, either originally or on appeal or review, of such matters as are or may be set forth in Article 25A, Section 5(u) of the Annotated Code of Maryland, excluding those matters affecting the adopting of or change in the general plan, zoning map, rules, regulations or ordinances.
- (c) *Rules of practice and procedure.* The Board of Appeals shall have authority to adopt and amend rules of practice governing its proceedings which shall have the force and effect of law when approved by legislative act of the Council. Such rules of practice and procedures shall not be inconsistent with the Administrative Procedure Act of the Annotated Code of Maryland. The rules may relate to filing fees, meetings and hearings of the Board, the manner in which its Chairperson shall be selected and the terms which he shall serve as Chairperson and other pertinent matters deemed appropriate and necessary for the Board. Three members of the Board shall constitute a quorum of the Board, and its hearings shall receive public notice as required by law. All hearings held by the Board shall be open to the public, and provision shall be made for all interested citizens and citizens groups to be heard. The Board shall cause to be maintained complete public records of its proceedings, with a suitable index.
- (d) *Appeals from decisions of the Board.* Within thirty days after any decision of the Board of Appeals is entered, any person, officer, department, board or bureau of the County, jointly or severally aggrieved by any such decision, may appeal to the Circuit Court for Howard County, in accordance with the Maryland Rules of Procedure. The Board of Appeals shall be a party to all appeals and shall be represented at any such hearing by the Office of Law.

- (e) *Employees of the Board.* The Board may appoint, within budgetary limitations, such employees, and the Executive shall make available to the Board such services and facilities of the County, as are necessary or appropriate for the proper performance of its duties.
- (f) *Implementing legislation.* The powers and functions of the Board of Appeals as herein provided for shall be defined by implementing legislation heretofore or hereafter enacted by the Council, subject to and to the extent required by applicable State law. The Council may by legislative act increase the compensation of the members of the Board of Appeals as provided in Section 501(a) of this Article and thereafter decrease such compensation; provided, however, that no reduction shall affect the compensation of a member of the Board of Appeals during his or her current term, and in no event shall the council have the power to decrease the compensation of members of the Board below the figure provided in this Charter. To the extent permitted by State law, the Council shall also have the power, by legislative act, to prescribe other appeals to be heard by, or to limit the jurisdiction of, the Board of Appeals in addition to those specified in this Article.

Editor's note—

An amendment to § 501 proposed by C.B. 89, 1980 was approved at an election held Nov. 4, 1980, and became effective Dec. 4, 1980. An amendment proposed by Res. No. 124, 1982, was approved at an election held Nov. 2, 1982, and became effective Dec. 2, 1982. An amendment to subsections (c) and (f) proposed by Res. No. 126, 1996 was approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996. An amendment to subsection (c) proposed by Res. No. 103, 2000 was approved at an election held November 7, 2000, and became effective December 7, 2000. An amendment to § 501(b) proposed by Res. No. 100, 2012 was approved at an election held on Nov. 6, 2012, and became effective on Dec. 6, 2012.

Section 502. Board of Appeals hearing examiner.

The County Council may appoint hearing examiners to conduct hearings and make decisions concerning matters within the jurisdiction of the Board of Appeals. Decisions of an examiner may be appealed to the Board of Appeals as provided by law. The Council shall establish by legislative act the duties, powers, authority and jurisdiction of any examiner appointed under this section. An examiner shall be a member in good standing of the Bar of the Maryland Court of Appeals and at the time of appointment shall have knowledge of administrative and zoning law, practice, and procedure. An examiner may be removed from office by vote of two-thirds of the members of the Council.

Editor's note—

An amendment repealing § 502, proposed by C.B. 66, 1980, was approved at an election held Nov. 4, 1980, and became effective Dec. 4, 1980.

Subsequently, an amendment proposed by Res. No. 103, 2000, approved at election November 7, 2000 and effective December 7, 2000, added a new § 502 as set out herein.

FOOTNOTE(S):

— (3) —

Editor's note— An amendment to art. V proposed by Res. No. 116, 1996 was approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996. ([Back](#))

Sayers, Margery

From: Christopher J. Alleva <jens151@yahoo.com>
Sent: Monday, July 1, 2019 7:53 AM
To: CouncilMail
Cc: Stuart Kohn; Dan O'Leary; Joel Hurewitz; Broida Joel
Subject: CB33-2019 Response to Mr. Sang Oh, Angelica Baily testimony and Howard County's Star Chamber
Attachments: Broida V WCI and Howard County.asf; Zoning Law and Nuisance Law.pdf; Little Patuxent Bus Stop and Pathway.pdf

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

Dear Council Members:

Please accept this for the record of CB33-2019.

As Mr. Oh opened his remark he said: "we need clear up some things." Unfortunately, Mr. Oh did the opposite with his testimony so I need to respond to some of the points he made in his testimony. This response does constitute a legal analysis it is simply a reply to his testimony in a legislative hearing.

I am going to skip any critique of Ms. Baily's testimony. Her testimony was so riddled with so many straw men, I tripped over them coming to the witness chair. The Chamber and Howard Hughes testimony oddly delivered through a County Agency, the Downtown Partnership was equally unpersuasive and self serving at the expense of the Citizen's of Howard County basic rights.

Oh's First Assertion: Standing is a requirement in order to appeal. You don't need standing to participate at Planning Board, you only need standing if you want to appeal.

That statement is perfectly accurate. Where it falls down is the failure to recognize that Planning and Zoning Appeals are under the legislative branch for a reason. It is designed as a check on the Administration. Appeals of Planning Board decisions are predicated on the complaint that the Administrative Agency, Planning Board or DPZ, did comply with the Howard County Code, the codification of legislative intent.

Furthermore, there are profound and flagrant errors in the Planning Board Rules of Procedure that violate the Howard County Administrative Procedures Act. For example, in section 1.106, there is no standard of proof, i.e. preponderance of the evidence and plans are heard that violate the County Charter, the Zoning Enabling Act, the Zoning Regulations and the Subdivision Regulations.

It is important to view this legislation in tandem with CB32- 2019, placing DPZ under oath and cross examining them at Planning Board sessions. Both of these bills address a fundamental problem in Howard County, that is the breach of faith and trust in DPZ and the Planning Board.

Oh's Second Assertion: Zoning Law is Derived from Nuisance Law

It accurate to say nuisance law applies only to what is in some way actually, or at least potentially noxious or harmful. Zoning is more broadly concerned with the regulation of uses whether or not they fall within this category. The basic philosophy behind both nuisance and zoning is the same, i.e., the proper regulation and use of property. But zoning is more comprehensive because it proceeds on the basis of benefitting the entire

community through a more or less extensive planned scheme of restrictions. (foot note 1. Zoning and the Law of Nuisance Fordham Law Review 1961).

Accordingly, this analogy is inapplicable to bill before the Council on standing.

Oh's Third Assertion: In order to complain you have to show actual injury to have standing.

How is this even possible? Planning and Zoning decisions precede the physical construction of the use approved. How can one show an injury for something that hasn't occurred. When Yellowstone Park was first proposed the Governor of Wyoming was opposed, years later seeing the benefits, he changed his position. Perhaps an appellants may change their mind years later. In the present it is impossible to show injury. Moreover, Appellants do not appeal for monetary damages. Successful appeals have to prove that the agency did not comply with their own rules.

Mr. Oh has created this false standard of distance and proof of an injury when in fact the standard is merely to you are specially aggrieved, that is differently than the general public.

Oh's Forth Assertion: Proposed text defining who has standing is more restrictive than the existing text.

That statement is perfectly accurate, yet entirely false. There is no standard currently, so any standard is more restrictive than no standard. The reality is that Oh and company have succeeded in imposing a highly dubious series of precedent setting Board of Appeals and Hearing Examiner mis-decisions that for all intents and purposes bar any one on the entire planet from appealing. It bars adjoining property owners, parties to the Planning Board case, and even properties on the same plat.

Oh's Fifth Assertion: Howard County Follows Bryniarski Case Precedent. Answer, this Erroneous.

This case deals with standing before Circuit Court in Maryland. Bryniarski has nothing to do with standing before a local appeals board. Attached hereto is a clip of the first minute and 30 seconds from the Appeals Court of the Joel Broida case, another public testifier on this Bill. Counsel for the developer pompously declares that Bryniarski is the law and the land and one of the Judges jumps out of his chair and declares, "no it's not, Bryniarski deals with standing before the Circuit Court" and then he notes there are several cases dealing with standing before Board's of Appeal. The Judge then says, even if you're right, and with body language says, and you're not, how can they overcome the exhaustion of Administrative Remedies hurdle for the Court to even hear the case?

Howard County Board of Appeals is a modern day Star Chamber

It is evident that Howard County in cahoots with the land use bar has created a "Star Chamber" of justice depriving it's citizen's of their basic right to due process. The Star Chamber was an English court that developed in the late 15th century, mainly trying cases affecting the interests of the Crown. It was notorious for its arbitrary and oppressive judgments and was abolished in 1641.

The present situation results in the Planning Board hearing cases they do not have authority hear, under the absence of even basic rules like a standard of proof. Parties are then barred from standing to appeal these gross injustices and then adding insult to injury they can never appeal to the Courts because they are prevented from exhausting their administrative remedies.

Finally, I want to share an appeal from 2015. CEPPA No, 12 required Howard Hughes to construct a pathway from the Hospital to Blandair Park. The segment that ran in front of the Columbia Exxon was proposed to

eliminate a decel. lane owned by the property and vital for traffic safety (see picture attached). We objected, and then we were treated to a parade of County staff from DPZ and DPW absurdly telling us how it would be safer.

It was only our right to appeal that forced the County and Howard Hughes to do the right thing and preserve this turning lane. And we were on our own, not backed by the hundreds of millions of dollars awarded to Howard Hughes by the County.

Fordham Law Review

Volume 29 | Issue 4

Article 10

1961

Zoning and the Law of Nuisance

Recommended Citation

Zoning and the Law of Nuisance, 29 Fordham L. Rev. 749 (1961).
Available at: <http://ir.lawnet.fordham.edu/flr/vol29/iss4/10>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

ZONING AND THE LAW OF NUISANCE

INTRODUCTION

The law of zoning, in a relatively short period of time, has achieved a prominent position. The process by which this facet of land use control originated, expanded and is maturing, can be traced, to a large extent, by an examination of its relationship with the much older common law concept of nuisance. Though the influence of nuisance law on zoning today is limited, zoning has had a continuing effect on the application of the former. This comment will explore the various interrelationships of both concepts.

COMPARISON OF NUISANCE AND ZONING

Nuisance Defined

Nuisance is of common-law origin¹ and is grounded in the maxim that "a man shall not use his property so as to harm another."² The concept of nuisance is a broad one, difficult to define precisely.³ Its meaning has been the subject of numerous and varied definitions,⁴ some of which extend its scope beyond the invasion of property interests. In its narrower, more accurate sense, nuisance denotes a condition, which because of some noxious or harmful characteristic, causes an unwarranted interference with the ownership and enjoyment of another's property.

Nuisances have been classified according to the scope of their effects as public or common, private, and mixed or united. A public nuisance is one which infringes upon those rights shared as a whole by the citizens of the community, regardless of the number directly injured.⁵ Private nuisances, on the other hand, affect one or more persons in the enjoyment of an individual right not similarly shared by the general public.⁶ Those which are mixed or united constitute both a public and a private nuisance.⁷ A facility, for example, polluting the atmosphere with smoke or dust may constitute both a public nuisance, enjoined at the behest of the municipality, and a private nuisance, actionable

1. See *Aldred's Case*, 9 Co. Rep. 57b, 77 Eng. Rep. 816 (1610).

2. "Sic utere tuo ut alienum non laedas." Joyce, *The Law of Nuisances* 45 (1906).

3. It has been said that "the only approximately accurate method of determining the meaning of the term nuisance is to examine the cases adjudicating what are and what are not nuisances." *Id.* at 1. For a discussion of the relationship between nuisance and negligence, see Comment, 24 *Ind. L.J.* 402 (1949).

4. See, e.g., *Hart v. Wagner*, 184 Md. 40, 43, 40 A.2d 47, 50 (1944); *Randall v. Village of Excelsior*, — *Minn.* —, —, 103 N.W.2d 131, 134 (1960); *Lore v. Town of Douglas*, — *Wyo.* —, —, 355 P.2d 367, 370 (1960). See also the definitions listed in Joyce, *The Law of Nuisances* 2-5 n.6 (1906). Blackstone gives a broad definition, describing it as "[A]nything that worketh hurt, inconvenience or damage." 3 Blackstone, *Commentaries* ¶216.

5. See, e.g., *Echave v. City of Grand Junction*, 118 Colo. 165, 168, 193 P.2d 277, 280 (1948); *Mandell v. Pivnick*, 20 Conn. Supp. 99, 125 A.2d 175 (Super. Ct. 1956).

6. E.g., *W. G. Duncan Coal Co. v. Jones*, 254 S.W.2d 720 (Ky. 1953); *Adams v. Commissioners*, 204 Md. 165, 102 A.2d 830 (1954).

7. *Garfield Box Co. v. Clifton Paper Bd. Co.*, 125 N.J.L. 603, 17 A.2d 588 (Sup. Ct. 1941).

by an individual property owner injured thereby.⁸ Generally, a public nuisance cannot be the subject of an action by an individual citizen unless he can show special injury apart from that suffered by the public.⁹

Nuisances have been further categorized according to type. A nuisance per se or at law is an act, occupation, or structure which is a nuisance regardless of location or surroundings.¹⁰ Examples fitting within this definition are necessarily limited, gambling establishments¹¹ and disorderly houses¹² being the two most often cited. Much more common are nuisances *per accidens*, or in fact, those which become such by reason of circumstances or location.¹³ A gasoline station¹⁴ or funeral parlor¹⁵ may in one location be an authorized activity, and in another may constitute a nuisance in fact. It has also been held, inaccurately, that these may be nuisances per se.¹⁶ In addition, those activities which have been declared nuisances by the legislature, or are carried on in violation of an ordinance, are said to be statutory nuisances.¹⁷

Zoning Distinguished

In its accurate sense, common-law nuisance applies only to what is in some way actually or at least potentially noxious or harmful. Zoning is concerned with the regulation of uses whether or not they fall within this category. The basic philosophy behind both nuisance and zoning is the same, *i.e.*, the proper regulation and use of property. But zoning is more comprehensive because it proceeds on the basis of benefitting the entire community through a more or less extensive planned scheme of restrictions. Various factors are taken into consideration such as the character of the district and its suitability for par-

8. See *McGee v. Yazoo & M.V.R.R.*, 206 La. 121, 122, 19 So. 2d 21, 22 (1944). See also *City of Phoenix v. Johnson*, 51 Ariz. 115, 119, 75 P.2d 30, 34 (1938).

9. *Schroder v. City of Lincoln*, 155 Neb. 599, 52 N.W.2d 808 (1952); *Morris v. Borough of Haledon*, 24 N.J. Super. 171, 174, 93 A.2d 781, 784 (Super. Ct. 1952). See Note, 23 Albany L. Rev. 447 (1959).

10. See *Dill v. Exel Packing Co.*, 183 Kan. 513, 331 P.2d 539 (1958); *Blumer v. Saginaw Cent. Oil & Gas Serv.*, 356 Mich. 399, 97 N.W.2d 90, (1959).

11. *Heyne v. Loges*, 68 Ariz. 310, 312, 205 P.2d 586, 588 (1949).

12. *Kelley v. Clark County*, 61 Nev. 293, 296, 127 P.2d 221, 224 (1942); *Windfall Mfg. Co. v. Patterson*, 148 Ind. 414, 416, 47 N.E. 2, 4 (1897).

13. E.g., *Lauderdale County Bd. of Educ. v. Alexander*, 269 Ala. 79, 83, 110 So. 2d 911, 915-16 (1959).

A nuisance per se is sometimes referred to as an absolute nuisance, and a nuisance in fact as a qualified nuisance. *Interstate Sash & Door Co. v. City of Cleveland*, 148 Ohio St. 325, 326, 74 N.E.2d 239, 240-41 (1947). "[T]he former . . . is established by proof of the mere act . . . the latter by proof of the act and its consequences." *State v. WOR-TV Tower*, 39 N.J. Super. 583, 587, 121 A.2d 764, 768 (Super. Ct. 1956).

14. *Bell v. Brockman*, 190 Okla. 583, 584, 126 P.2d 78, 79 (1942); *Thomas v. Dougherty*, 325 Pa. 525, 526, 190 Atl. 886, 887 (1937).

15. *City of St. Paul v. Kessler*, 146 Minn. 124, 125, 178 N.W. 171, 172 (1920).

16. *Pennell v. Kennedy*, 338 Pa. 285, 12 A.2d 54 (1940); *Appeal of Perrin*, 305 Pa. 42, 156 Atl. 305 (1931). See Note, 24 Mo. L. Rev. 269 (1959).

17. *O'Keefe v. Sheehan*, 235 Mass. 390, 126 N.E. 822 (1920).

ticular uses,¹⁸ the conservation of property values,¹⁹ the lessening of traffic congestion,²⁰ public safety,²¹ and aesthetic considerations.²² These and similar factors may also be given weight in nuisance actions.²³ In the latter case, they are not prior, planned considerations, as they are in zoning, but rather constitute evidentiary aids in determining the character of the use in question.

INFLUENCE OF NUISANCE ON THE DEVELOPMENT OF ZONING

Nuisance law exerted a greater influence on zoning when it was in its formative stages than it does today. It was early recognized that the validity of zoning laws was based not upon their relation to the law of nuisance, but upon the police power of the state.²⁴ Yet courts relied on the concept of nuisance in passing upon the new zoning ordinances.²⁵ Since the first zoning enactments were little more than nuisance regulations,²⁶ it was natural for courts to tend to relate them by analogy. Particularly before the decision in *Village of Euclid v. Ambler Realty Co.*,²⁷ which upheld zoning regulations as a proper exercise of the police power, restrictions of uses which were also common-law nuisances, or which at least contained elements of the same, were more likely to be upheld.²⁸ Failure to give compensation for the restriction of uses which were not nuisances was considered to border on deprivation of property without due process of law. As zoning ordinances expanded to include the regulation of nonoffensive sub-

18. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926); *City of Keene v. Blood*, 101 N.H. 466, 146 A.2d 262 (1958); *Eves v. Zoning Bd.*, 401 Pa. 211, 164 A.2d 7 (1960). Additional zoning purposes are listed in *State v. Hillman*, 110 Conn. 92, 94-97 n.1, 147 Atl. 294, 295-96 n.1 (1929). See also Pa. Stat. Ann. tit. 16, § 5226 (1953).

19. *Strain v. Mims*, 123 Conn. 275, 193 Atl. 754 (1937); *Cobble Close Farm v. Board of Adjustment*, 10 N.J. 442, 452-53, 92 A.2d 4, 9 (1952).

20. *Northwest Merchants Terminal, Inc. v. O'Rourke*, 191 Md. 171, 60 A.2d 743, 753 (1948).

21. *State v. Iten*, — Minn. —, —, 106 N.W.2d 366, 368-69 (1960).

22. See Comment, 29 *Fordham L. Rev.* 729 (1961).

23. *Obrecht v. National Gypsum Co.*, 361 Mich. 399, 105 N.W.2d 143 (1960); *Sohns v. Jensen*, 11 Wis. 2d 449, 105 N.W.2d 818 (1960); *Pennoyer v. Allen*, 56 Wis. 502, 14 N.W. 609 (1883). See also *Beuscher & Morrison, Judicial Zoning Through Recent Nuisance Cases*, 1955 *Wis. L. Rev.* 440, 443.

24. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387-88 (1926); *Miller v. Board of Pub. Works*, 195 Cal. 584, 234 Pac. 381, 384 (1925); *Boyd v. City of Sierra Madre*, 41 Cal. App. 520, 133 Pac. 230 (Dist. Ct. App. 1919); Comment, 32 *Yale L.J.* 833, 834 (1923); Comment, 29 *Yale L.J.* 109 (1919).

25. See Noel, *Unaesthetic Sights As Nuisances*, 25 *Cornell L.Q.* 1, 14 (1939).

26. See Bettman, *The Constitutionality of Zoning*, 37 *Harv. L. Rev.* 834, 839 (1924): "[Z]oning represents no radically new type of property regulation, but merely an extension or new application of sanctioned traditional methods for sanctioned traditional purposes." See also Comment, 39 *Yale L.J.* 735, 737-38 (1930).

27. 272 U.S. 365 (1926).

28. "When zoning was new and had to win its way through legislatures and the courts, theories not linking up with familiar categories of power and policy would have been no help to the cause, the legal pioneers in the movement were wise to proceed as they did." Freund, *Some Problems in the Law of Zoning*, 24 *Ill. L. Rev.* 135, 149 (1929).

jects, it became clear that the police power of the state was the sole basis for their constitutionality. This was conclusively determined by the *Euclid* decision, although it was noted by Mr. Justice Sutherland that the analogies of nuisance law, where applicable, could serve as useful guides.²⁹ It could no longer be doubted that zoning was not limited to or coextensive with nuisance. However, because of the early reliance on nuisance, and because of the analogy between nuisances and restricted uses, courts remained prone to regard all restricted uses as nuisances, if not in theory, at least in terminology. Use of nuisance terms in zoning cases has persisted long after the cleavage between them should have become complete.³⁰ This has helped to sustain the notion, less and less prevalent, that somehow nuisance and zoning are dependent upon each other.

Nuisance influence has remained strongest in the field of retroactive zoning.³¹ Logically, it was felt that a more persuasive reason was necessary to justify the removal without compensation of already existing uses than the prohibition of future ones. The abatement power over nuisance could be borrowed if there were in fact an element of common-law nuisance present in the subject sought to be removed.³² Reliance upon the latter was felt to be necessary because of the difference in the application of the respective powers of zoning and nuisance. This was explained by the court in *Jones v. City of Los Angeles*:³³

And here the distinction between the power to prohibit nuisances and the power to zone is exceedingly important. The power over nuisances is more circumscribed in its objects; but once an undoubted menace to public health, safety, or morals is shown, the method of protection may be drastic. . . . Zoning is not so limited in its purposes. . . . It deals with many uses of property which are in no way harmful. If its objects are so much broader than those of nuisance regulation, if its invasion of private property interests is more extensive, and if the public necessity to justify its exercise need not be so pressing, then does it not follow that its means of regulation must be more reasonable and less destructive of established interests?³⁴

Generally, nonconforming uses which were not actual nuisances would be protected even today from removal without compensation.³⁵ Yet if they become

29. 272 U.S. at 387-88.

30. See *Clutter v. Blankenship*, 346 Mo. 961, 144 S.W.2d 119 (1940); *King v. Blue Mountain Forest Ass'n*, 100 N.H. 212, 123 A.2d 151 (1956); *Mayor of Alpine v. Browster*, 7 N.J. 42, 80 A.2d 297 (1951); *Borough of Cresskill v. Borough of Dumont*, 28 N.J. Super. 26, 100 A.2d 182, 189 (Super. Ct.), aff'd, 15 N.J. 238, 104 A.2d 441 (1954).

31. See *Jones v. City of Los Angeles*, 211 Cal. 304, 295 Pac. 14, 22 (1930); Noel, *Retroactive Zoning and Nuisances*, 41 Colum. L. Rev. 457, 473 (1941); O'Reilly, *The Non-Conforming Use and Due Process of Law*, 23 Geo. L.J. 218, 225 (1934).

32. *Jones v. City of Los Angeles*, supra note 31; Noel, supra note 31, at 473: "Although according to the better view it is not essential that a particular enterprise actually constitute a common-law nuisance to be subject to legislative removal, the matter of whether injunctions have been frequent or rare will influence strongly the decision as to whether the use is sufficiently detrimental to the public welfare to be subject to removal without compensation."

33. 211 Cal. 304, 295 Pac. 14 (1930).

34. *Id.* at 310, 295 Pac. at 20. See also Comment, 1951 Wis. L. Rev. 685, 692.

35. *Kryscnski v. Shenkin*, 53 N.J. Super. 590, 148 A.2d 58 (Super. Ct. 1959); *Peoplo v. Miller*, 304 N.Y. 105, 106 N.E.2d 34 (1952); *Incorporated Village of Brookville v. Paulgene*

inimical to the public health or safety, they may be removed under the police power.³⁶ Even though such uses are usually found to be nuisances, this finding is unnecessary. Zoning has thus achieved an independent, self-sufficient status. This contrasts sharply with the earlier consideration of zoning as a mere extension of nuisance law.

INFLUENCE OF ZONING ON THE LAW OF NUISANCE

The growth of zoning may be tending to liberalize nuisance law. This is indicated by an analysis of court decisions in nuisance cases outside of zoned areas.³⁷ Since the trend today is toward a liberal application of zoning laws, the effect upon nuisance law in zoned areas has been similar. In the latter instance, however, the influence has been more direct, leading some courts to hold that where they coincide with common-law nuisance, zoning regulations have pre-empted the field.³⁸ At the least, while the law of nuisance remains essentially distinct, zoning statutes have to varying degrees circumscribed the extent of nuisance actions. There are dual aspects of this effect—the authorization of common-law nuisances and the restriction of uses which are not such.

Effect of Authorizing Ordinances

A use which is being properly operated in an authorized zone cannot be a nuisance per se. Generally it cannot be a public nuisance either.³⁹ In reaching this conclusion, the court, in *Robinson Brick Co. v. Luthi*,⁴⁰ stated:

Where the legislative arm of the government has declared by statute and zoning resolution what activities may or may not be conducted in a prescribed zone, it has in effect declared what is or is not a public nuisance.⁴¹

An authorized use, however, may constitute what is in fact a public nuisance.⁴²

Realty Corp., 24 Misc. 2d 790, 200 N.Y.S.2d 126 (Sup. Ct. 1960); *Incorporated Village of No. Hornell v. Rauber*, 181 Misc. 546, 40 N.Y.S.2d 938 (Sup. Ct. 1943). See generally Noel, *Retroactive Zoning and Nuisances*, 41 Colum. L. Rev. 457 (1941); O'Reilly, *The Non-Conforming Use and Due Process of Law*, 23 Geo. L.J. 218 (1934).

36. *Incorporated Village of Brookville v. Paulgene Realty Corp.*, supra note 35. "How far the police power will go in sustaining a governmental agency in interfering with established property rights without paying compensation therefore is not capable of exact statement. Apparently it is a matter of weighing the urgency of the evil to be corrected against the cost to the property owner of complying with the new law, or the diminution in value which results from it. . . ." *Id.* at 798, 200 N.Y.S.2d at 137.

37. *Beuscher & Morrison, Judicial Zoning Through Recent Nuisance Cases*, 1955 Wis. L. Rev. 440.

38. *Robinson Brick Co. v. Luthi*, 115 Colo. 106, 169 P.2d 171 (1946); *Godard v. Babron-Dow Mfg. Co.*, 313 Mass. 280, 47 N.E.2d 303 (1943). See generally Kurtz, *The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas*, 36 *Dicta* 414 (1959); *Comment*, 54 Mich. L. Rev. 266 (1955).

39. E.g., *Kornoff v. Kingsburg Cotton Oil Co.*, 45 Cal. 2d 265, 269, 288 P.2d 507, 511 (1955); *Nugent v. Vallone*, — R.I. —, 161 A.2d 802 (1960); *Lindermeyer v. City of Milwaukee*, 241 Wis. 637, 639, 6 N.W.2d 653, 655 (1942).

40. 115 Colo. 106, 169 P.2d 171 (1946).

41. *Id.* at 108, 169 P.2d at 173.

42. See the definition of public nuisance at text accompanying note 5 supra.

But since the governing authority which has authorized the use is also the only proper party to bring an action for abatement of a public nuisance,⁴³ the remedy has, in effect, been suspended.

The court, in *Robinson*, went further, and held that even if the mining operations in question were a private nuisance, the lower court had no jurisdiction to enjoin the operation, because of the authorizing statute.⁴⁴ A majority of courts, however, have held that a use, which, though authorized by statute, becomes a nuisance in fact, may be the basis of an action to enjoin a private nuisance on the part of the one injured.⁴⁵ This view recognizes that what constitutes a nuisance should not be conclusively determined by zoning ordinances. The minority cases hold that the zoning ordinance, since it decides which uses are permitted in various zones, is decisive as to whether nuisance remedies should be granted. The implication, therefore, is that a remedy for a private nuisance will not be permitted against an authorized use, not because it is not in fact a common-law nuisance, but because it is located in an authorized zone.⁴⁶ At least one state has expressly so provided by statute.⁴⁷

The theory behind this enactment and decisions of similar effect is that persons living in developed areas must to a certain degree submit to the unavoidable annoyances and discomfort attendant upon the operation of necessary industries or facilities. It is the purpose of zoning to attempt to strike a balance between these conflicting interests as painlessly as possible. Necessarily the line must be drawn somewhere, resulting in different classifications of zones. For this reason, "what would be an unreasonable interference with the comfortable enjoyment of one's home in a residential area might be regarded as the normal, expected and inescapable concomitant of modern social conditions in an industrial section."⁴⁸

Thus the conflict in this line of cases is not whether a nuisance is in fact present, but over the policy question of whether authorized operations will be actionable despite their careful conduct. To say that an authorized use is not or cannot be a nuisance really means that the complainant is without a remedy.

43. See *Bouquet v. Hackensack Water Co.*, 90 N.J.L. 203, 101 Atl. 379 (1917); *Morris v. Borough of Haledon*, 24 N.J. Super. 171, 93 A.2d 781 (Super. Ct. 1952).

44. 115 Colo. at 108, 169 P.2d at 173.

45. E.g., *Commerce Oil Ref. Corp. v. Miner*, 170 F. Supp. 396 (D.R.I. 1959); *Vulcan Materials Co. v. Griffith*, 215 Ga. 811, 815, 114 S.E.2d 29, 33-34 (1960); *Rockenbach v. Apostle*, 330 Mich. 338, 341, 47 N.W.2d 636, 639 (1951); *Sweet v. Campbell*, 282 N.Y. 146, 25 N.E.2d 963 (1940) (four-to-three decision); *Reid v. Brodsky*, 397 Pa. 463, 465 n.1, 156 A.2d 334, 336 n.1 (1959). See 9 *Fordham L. Rev.* 437 (1940); 11 *Syracuse L. Rev.* 323 (1960).

46. See *Bove v. Donner-Hanna Coke Corp.*, 142 Misc. 329, 254 N.Y. Supp. 403 (Sup. Ct. 1931). See also *Beuscher & Morrison, Judicial Zoning Through Recent Nuisance Cases*, 1955 *Wis. L. Rev.* 440, 443-44; *Comment*, 54 *Mich. L. Rev.* 266, 267 (1955).

47. Cal. Code Civ. Proc. § 731a. Compare *Fendley v. City of Anaheim*, 110 Cal. 731, 294 Pac. 769 (1930), with *Kornoff v. Kingsburg Cotton Oil Co.*, 45 Cal. 2d 265, 288 P.2d 507 (1955).

48. *Fuchs v. Curran Carbonizing & Eng'r Co.*, 279 S.W.2d 211, 218 (Mo. Ct. App. 1955). See also *Kankakee v. New York C.R.R.*, 387 Ill. 109, 55 N.E.2d 87, 90 (1944).

The expression that the legislature may legalize that which otherwise would be a public or private nuisance⁴⁹ leads to the same result. Conversely, the legislature has the power to prescribe, under reasonable limitations, that certain operations constitute nuisances, thereby changing the common-law classifications.⁵⁰

The Effect of Zoning Ordinances Upon Unauthorized Uses

The authority of the legislature to modify the extent of nuisance law has been carried to an extreme by several cases⁵¹ which have declared that any operation carried out in violation of a zoning ordinance is a nuisance, even, in some instances, a nuisance per se. Thus a retail store in a residential area has been expressly declared a nuisance because it violated a zoning ordinance,⁵² although the restriction has no real relation to the common-law concept of nuisance.⁵³ The effect of these decisions is to extend the definition of nuisance beyond its traditional meaning, thereby introducing another element of uncertainty into this already ill-defined and confused area.

The majority of courts recognize that the legislature does not have the power to declare that a violation of a zoning ordinance will itself constitute a nuisance.⁵⁴ Structures erected subsequent to and in violation of a zoning ordinance may of course be enjoined,⁵⁵ whether they are or are not common-law nuisances. On the other hand, prior nonconforming uses which cannot be reasonably included either under the police power, or under nuisance law, should not be subject to removal without compensation.⁵⁶

Ultimately, the test, in the case of either future or existing nonconforming uses, reduces itself basically to the question of whether the restrictive ordinance, considering all the circumstances, is or is not arbitrary in its application.⁵⁷ The fact that a restricted operation is denominated a nuisance, a statutory nuisance, or is excludable under the police power is not determinative. This goes back to

49. *Godard v. Babson-Dow Mfg. Co.*, 313 Mass. 280, 47 N.E.2d 303 (1943); *Clutter v. Blankenship*, 346 Mo. 961, 144 S.W.2d 119 (1940).

50. *Mayor of Alpine v. Brewster*, 7 N.J. 42, 80 A.2d 297 (1951); *Borough of Cresskill v. Borough of Dumont*, 28 N.J. Super. 26, 100 A.2d 182 (Super. Ct. 1953), *aff'd*, 15 N.J. 238, 104 A.2d 441 (1954). See also Pa. Stat. Ann. tit. 16, § 5190 (1953).

51. See *McIvor v. Mercer-Fraser Co.*, 76 Cal. App. 2d 247, 172 P.2d 758 (Dist. Ct. App. 1946); *City of New Orleans v. Lafon*, 61 So. 2d 270, 273 (La. Ct. App. 1952); *Hcintl v. Pecher*, 330 Pa. 232, 234, 198 Atl. 797, 799 (1938). See also *People v. Kelly*, 295 Mich. 632, 634, 295 N.W. 341, 343 (1940).

52. *City of New Orleans v. Liberty Shop, Ltd.*, 157 La. 26, 101 So. 798 (1924).

53. *Ibid.*

54. *Jones v. City of Los Angeles*, 211 Cal. 304, 295 Pac. 14 (1930); *Monzolino v. Grossman*, 11 N.J.L. 325, 168 Atl. 673 (1933); *Parker v. Zoning Bd.*, — R.I. —, —, 156 A.2d 210, 213 (1959); *Greenwood v. The Olympic, Inc.*, 51 Wash. 2d 18, 315 P.2d 295 (1957).

55. See Pa. Stat. Ann. tit. 16, § 5232 (1953).

56. See note 35 *supra* and accompanying text.

57. *Reese v. Mandel*, 224 Md. 121, 125, 167 A.2d 111, 115-16 (1961); *Kozelnick v. Township of Montgomery*, 24 N.J. 154, 131 A.2d 1 (1957); *Delawanna Iron & Metal Co. v. Albrecht*, 9 N.J. 424, 426, 88 A.2d 616, 618 (1952); *Walker v. Town of Elkin*, 254 N.C. 85, 88, 118 S.E.2d 1, 4 (1961); *Gayland v. Salt Lake County*, — Utah —, —, 358 P.2d 633, 636 (1961).

the distinction between nuisance and zoning noted in the early case of *City of Aurora v. Burns*,⁵⁸ a view subsequently adopted by the *Euclid* decision:

The exclusion of places of business from residential districts is not a declaration that such places are nuisances or that they are to be suppressed as such, but it is a part of the general plan by which the city's territory is allotted to different uses in order to prevent, or at least to reduce, the congestion, disorder, and dangers which often inhere in unregulated municipal development.⁶⁰

If the operation in question is not offensive or dangerous, it should not properly be the subject of a nuisance action. If it is a proposed use, it may be restricted by a zoning ordinance. But if it preceded the zoning regulation it will generally be protected as a nonconforming use.⁶⁰ The courts, in applying a rule of reason, to both zoning and nuisance restrictions, will determine whether they are so confiscatory as to come within the purview of the just compensation clause of the fifth amendment or the due process clause of the fourteenth amendment. This is actually the underlying basis for the validity of all regulatory enactments dealing with property.

Zoning Laws as Evidence of Nuisance

In nuisance actions, courts may take into consideration zoning regulations proscribing or authorizing similar uses. While the presence or absence of such statutes may be persuasive evidence, it is not determinative of the question in the particular case.⁶¹ The majority of courts do not feel conclusively bound in nuisance cases by zoning ordinances either authorizing or prohibiting the type of operation in question.⁶²

CONCLUSION

Both nuisance and zoning derive from the same basis—the police power; and both have the same ultimate purpose—land use regulation. Both are ultimately governed in their application by the appropriate clauses of the fifth and fourteenth amendments. Within these bounds, the unmistakable tendency has been to allow a widening of the scope of zoning and an extension of its powers to the outside limits of what is a reasonable and non arbitrary plan for a better community. Similarly, except where the policy of protection of industrial uses has intervened, there has been a liberalization of the application of nuisance law. It can be expected that in the future there will be a decrease in the uncertainty caused by relating zoning with the confusing concept of nuisance, proportionate to the increase in the scope and self-sufficiency of zoning.

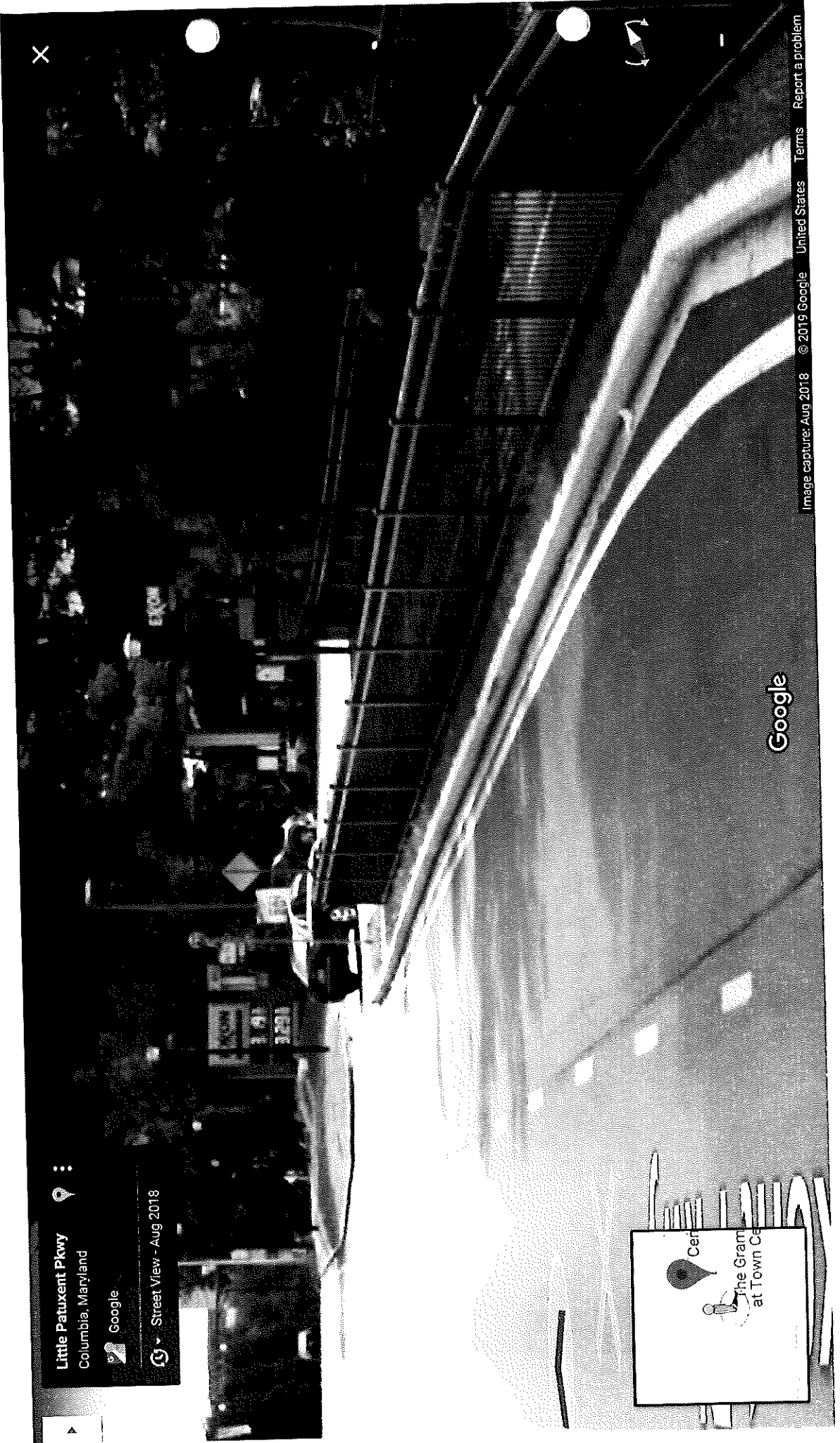
58. 319 Ill. 93, 149 N.E. 784 (1925).

59. 272 U.S. at 392-93 (1926), citing *City of Aurora v. Burns*, 319 Ill. 93, 94-95, 149 N.E. 784, 788 (1925).

60. See note 35 supra and accompanying text. See also Pa. Stat. Ann. tit. 16, § 5233 (1953).

61. See *Commerce Oil Ref. Corp. v. Miner*, 170 F. Supp. 396, 409 (D.R.I. 1959); *Lauderdale County Bd. of Educ. v. Alexander*, 269 Ala. 79, 110 So. 2d 911 (1959); *Rockenbach v. Apostle*, 330 Mich. 338, 341, 47 N.W.2d 636, 639 (1951); *White v. Old York Rd. Country Club*, 222 Pa. 147, 185 Atl. 316 (1936); *Appeal of Perin*, 305 Pa. 42, 156 Atl. 305 (1931). See also *Kellerhals v. Kallenberger*, — Iowa —, 103 N.W.2d 691 (1960); *Sohns v. Jensen*, 11 Wis. 2d 449, 105 N.W.2d 818 (1960).

62. See notes 45 and 54 supra and accompanying text.



X



Little Patuxent Pkwy
Columbia, Maryland



Street View - Aug 2018

Google

Center for the Grand at Town Center

Image capture: Aug 2018 © 2019 Google United States Terms Report a problem

Sayers, Margery

From: Christopher J. Alleva <jens151@yahoo.com>
Sent: Monday, July 1, 2019 7:12 AM
To: CouncilMail; Brian England
Cc: Joel Hurewitz; Broida Joel; Dan O'Leary; Williams, China; Facchine, Felix; Walsh, Elizabeth; Jung, Deb
Subject: CB33- 2019/ 2013 HC B. of Appeals Erroneously Attempts to Dismiss Case for Lack of Standing where they were original jurisdiction
Attachments: BA 11-34 C Giant Standing Notice.pdf; OOL-conflict.doc

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

To: County Council of Howard County.

Below I pasted in an article from the Baltimore Sun that details an incident when the Board of Appeals acted arbitrarily, capriciously, and erroneously on the standing matter. I wanted to get this in record for CB33-2019.

After 13 sessions from October 2012 the Board of Appeals voted 3-2 July 15, 2013 to deny Giant Foods gas station conditional use request for a gas station. From the beginning it was obvious to everyone that putting a gas station at the Centre Park Drive shopping center was unwise. The parking lot already failed.

Outrageously, the Board voted to recall the parties two months later on 9/11/2013 to hear the Board's motion to dismiss the case for lack of standing after they had voted. The scandal here is that no one has to have standing to oppose a conditional use before the BoA because they are sitting in original jurisdiction not in an appellate capacity. **By the way, Giant is now glad this was denied.**

Also, attached is a memorandum to the file written to memorialize the BoA errors in the Broida case. Mr. Broida testified to his experiences in 2007. Again, the BoA misapplied the law

Amanda Yeager

Baltimore Sun October 2, 2013

People seeking standing in a recent Howard County Board of Appeals case about a proposed gas station on Centre Park Drive in Columbia are accusing the board of violating the Maryland Open Meetings Act for holding an unannounced work session after a hearing on Sept. 11.

Bill Erskine, the attorney for those seeking standing in the gas station case, wrote a letter to the board stating that the work session "was in fact intended to deprive the public as well as the parties to this instant case of the notice required under the Maryland Open Meetings Act."

In January 2012, operators of the Giant Food store on Centre Park Drive requested a conditional use to open a gas station in the Columbia Palace Plaza parking lot. Objections were raised by Sean Maumood, who owns a gas station across the street, as well as three neighborhood residents concerned about a rise in traffic. The county hearing examiner approved the request, and the case moved to the Board of Appeals.

According to documents provided by Howard County Independent Business Association Executive Director Chris Alleva, who aided the gas station owner and residents in their objection, the unscheduled Sept. 11 work session was held after the close of an unrelated hearing.

Alleva, who had just attended another the hearing, said he and his lawyer packed up and left at the end, only to find out later a work session followed the same night.

The Maryland Open Meetings Act requires "reasonable or advance notice" in writing for government meetings held in closed or open session.

A Board of Appeals hearing on plans for a funeral home in Clarksville that was scheduled for Thursday, Jan. 5 had to be postponed because the hearing was not properly advertised by the county. The law says the county has to advertise zoning hearings 30 days in advance, through a notice in the local...

The work session lasted 12 minutes, according to minutes from the prior meeting.

Alleva and Erskine were subsequently notified by the board's administrative assistant that a work session to discuss standing in the gas station case had been scheduled for Oct. 3.

The board already voted July 15 to approve standing for Maumood and deny the request by Giant for a conditional use to build the gas station.

"They voted already," Alleva said. "For them to do this" – revisit who has standing in the case – "is highly irregular."

At the hearing on July 15, opponents argued, and some board members agreed, that the gas station Giant wanted would create safety hazards for customers driving through the parking

The votes on who had standing and the Giant request to build were both split, 3 to 2.

In notifying Erskine, the appeal board's administrative assistant said board member James Howard moved to reconsider standing in the case during the Sept. 11 work session, citing a decision in a prior Baltimore land-use case.

In that decision, a judge ruled that Remington resident Benn Ray had no standing to object to a proposed development of apartments and a big-box store on the site of a closed car dealership because he didn't live close enough to be negatively affected.

Alleva and Erskine said the Benn Ray case already had been discussed in a prior Board of Appeals hearing.

Erskine wrote to the board and requested the Oct. 3 work session not be held. He wrote that Maryland law requires motions to reconsider standing be brought by a party to the case, and only then in the event of a mistake of fact or law.

"Quite simply, Mr. Howard is asking the Board to reconsider the exact same facts and the exact same law and is hoping that the Board will have an impermissible *change of mind* [Erskine's emphasis]," he wrote.

Barry Sanders, counsel for Howard and the Board of Appeals, declined to be interviewed. Howard also would not answer questions about the case.

County Deputy Solicitor Paul Johnson, who does not represent the board, said no state open meetings rules were broken.

"I think it would be a little bit excessive to say we have to give everybody notice to say we're having a work session to decide when we're going to have another work session," Johnson said.

Copyright © 2019, The Baltimore Sun, a Baltimore Sun Media Group publicatio

Howard County Board of Appeals

George Howard Building
3430 Courthouse Drive
Ellicott City, Maryland 21043
313-2377

September 12, 2013

Stacy P. Silber, Esq.
Lerch, Early & Brewer
3 Bethesda Metro Center - Suite 460
Bethesda, MD 20814

William Erskine, Esq.
Offit Kurman
8171 Maple Lawn Blvd., Suite 200
Maple Lawn, MD 20759

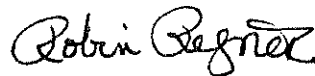
Dear Ms. Silber & Mr. Erskine:

RE: BA 11-034C, Giant of Maryland, LLC

On September 11, 2013, Board member James Howard moved to reconsider the Motion to Dismiss for Lack of Standing in BA 11-034C, Giant of Maryland, LLC, based on the record as presented before the Board previously, in light of the decision in the *Benn Ray* case (Benn Ray, et al. v. Mayor and City council of Baltimore, et al. 430 Md. 74 (2013))

The Board has scheduled a work session to consider this Motion for Thursday, October 3 @ 6:30 p.m. in the C. Vernon Gray Room.

Sincerely,



Robin Regner
Administrative Assistant

cc: Board members
Barry Sanders, Esq.

1 It Whom it may concern:

Inherent Conflict of Office of Law

There are a ton of cases that “permit” a public attorneys office to represent multiple and conflicting segments of Government.

That said I think there is a fairly compelling case in Howard County to review that practice. First, in my opinion, contrary to some in the HC OOL, there is only one client, not multiple clients. (Charter Section 101. - Body corporate and politic. “Howard County as it now exists constitutes a body corporate and politic”)

The disparity is particularly seen in Board Of Appeal cases, whose rules are archaic and deny due process. The subpoena rule (must ask before any testimony is taken) and sign in rule in particular¹. They have been used for years as “gotcha” rules”.

Over the years the BOA has on occasion hid behind it’s archaic/out dated rules of procedures and the **Office of Law’s preference for “rote” hearings and ‘de facto’ asserted support of the County, partiucularly DPZ’s positions**, another one of its stated public clients².

¹ . What ‘due process’ principle do these rules support?

² . By way of example of the Office of Law’s inherent conflict, in a recent case DPZ refused to correct its erroneous pending Technical Staff Report (TSR) to the BOA, until a subpoena was issued (in a number of cases when there are errors in the TSR, DPZ has automatically refused to correct clear errors ,or erroneous statement based on lack of information) for Ms. McLaughlin; Paul Johnson, Esq, Deputy County Solicitor, then intervened on behalf of Ms. McLaughlin. The result was a corrected TSR on a significant issue in the case. Ms. McLaughlin’s subpoenaed appearance was then excused. **But the conflict issue remains, and in my opinion adversely affects the rendering of independent legal advice to the BOA!**

Another example was the Tower case, where OOL counsel gave a board member what in my opinion, was absolutely wrong legal advice resulting in a significant vote change, from 3-1 granting standing to Mr. Broida, to 2-2 tie vote. (See the unreported opinion of *Broida v. Renaissance Centro Columbia, LLC*, unreported – issued 7-23-2008)

The 2-2 vote resulted from Mr. Sanders erroneous answer to Mr. Pfefferkorn’s question to Mr. Sanders of “whether Mr. Broida’s special aggrievement had to be different than Ms. Stolley’s aggrievement (who also lived in the same adjacent building as Mr. Broida). When Mr. Sanders answered yes, Mr. Pfefferkorn changed his vote, resulting in the 2-2 tie, instead of a 3-1 vote in favor of Broida’s standing. The *right answer* is that Mr. Broida had to show a special aggrievement from the general public, NOT from Ms. Stolley, a fellow resident in the same adjacent building as Mr. Broida’s residence.

That error was compounded by the Office of Law’s refusal (to the undersigned’s knowledge- first time ever) not to join Broida’s appeal from the Circuit Court’s grant of a Motion for Summary Judgment in violation of the long standing legal requirement of “*exhaustion of administrative remedies*”. As the Court of Special Appeals found, when measured again the correct legal standard the 2-2 vote was denial of RCC’s Motion to Dismiss. RCC failed to carry their burden of production and persuasion on the rebuttable presumption of Mr. Broida’s standing. (See page 10-12 of the opinion). Interestingly after conferring with OOL Counsel, the BOA came back and voted to continue the hearing until new members could vote, instead of correctly concluding that RCC had failed in its challenge of Mr. Broida’s standing and proceeding with the De Novo hearing as provided by 2.210 (a)(2) (iii). In my opinion, Mr. Sanders was influenced by DPZ’s extremely strong position that their New Town procedures not be legally challenged, **which was the focus of Mr. Broida’s appeal**. DPZ and the Administration (*despite political promises to the contrary*) wanted RCC to win in the worst way to avoid possible exposure of illegal practices over the years. That explains the OOL’s exceedingly weak response at the Circuit Court level and their failure (to my

Frankly, the BOA needs to review the record of the Office of Law's record on appeal to Annapolis³. In that Tower case, in my opinion had Mr. Sanders given the correct advice, the vote would have been 3-1 for Mr. Broida's standing. Alternatively had he correctly analyzed the effect of the 2-2 vote, Mr. Broida still would had standing.

In my opinion from seeing a number of cases over the years, there has been a clear preference in the OOL's advice to the BOA to support the applicable 'administrative decision', typically being appealed. In my opinion that constitutes a conflict of interest and denies the BOA 'independent' legal advice. In my opinion it also increases the number of appeals, which even with mostly "pro se"/volunteer counsel (huge advantage to Appellee in terms of resources/legal support), has resulted in an unusually unsuccessful appeal record for OOL

knowledge first time) to join Mr. Broida's appeal challenging the Circuit Court's opinion ending the case by Summary Judgment BEFORE "*exhaustion of administrative remedies*"

³ . A significant number of the appeals are 'pro se' and/or without the benefit/resources of paid counsel, a distinct advantage to the Appellee side.

Sayers, Margery

From: Susan Gray <susan@campsusan.com>
Sent: Friday, June 21, 2019 8:59 AM
To: CouncilMail; STUART KOHN; Alan Schneider; Charles Lapinski; Chris Alleva; Susan Garber; Dan O'Leary; Marlena Jareaux
Cc: Susan Gray
Subject: CB 33 Standing Bill

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

Dear Council Members:

Some comments on Bill 33-2019:

1. The Bill, as proposed, doesn't really improve citizen standing in HC. It defines the legal term "specifically aggrieved" by the more common phrases typically used in standing cases in defining what that term means. Unfortunately, though, this use of more common language seems problematic because it hides the fact that what those common phrases actually mean in terms of whether one has standing to mount an appeal all the way up through the courts is very nuanced and condition specific. I fear that folks will take the common descriptions at face value and just assume they have standing without carefully considering the nuances of their case and whether in their particular circumstance they truly have standing.

If there is any possibility of litigation through the courts, now if you go through the Board of Appeals process as is set out in CB 33, you have to make sure from the get go before the Planning Board that there is a potential petitioner who meets all the Md. case law standing requirements, not just what is specified in the Howard County Code. I can see how the use of this more common language establishing an appeal from the Planning Board to the BOA (as well as the new language which allows anyone who participated in the Planning Board proceeding to appeal to the BOA) could actually set folks up for failure when they file for judicial review of a BOA decision.

2. If the Council truly wishes to open up standing in the County, there is a relatively easy way to do this—that is: have nothing, or almost nothing go through the Board of Appeals. (BOA) The reason for this is that under Article XI A of the Md. Constitution, the Express Powers Act (now Land Use Article of Annotated Code, Subtitle 10) and the HC Charter, one has to be specifically aggrieved to file an appeal of a BOA decision to Circuit Court. The HC Charter mimics this state law standard. Since state law and the Charter govern here, both would have to be changed to have a different test for standing for appealing a BOA decision to Circuit Court. Folks very well could think that the same appeal standard applies from the BOA to the Circuit Court when it does not.

From a citizens perspective, the good thing is there is no such state or charter requirements for filing judicial appeals of other agency decisions (decisions from quasi-judicial proceedings before the Planning Board, Hearing Examiner or Zoning Board). For appealing decisions to the Circuit Court from these entities, the Council can simply establish by ordinance (or the people could ratify a Charter change) setting forth who has standing. Through either of these methods standing can be given to whomever and whatever the Council or the people choose. In PG, at one point standing was expanded and given to any taxpayer in the County.

Besides the ability to establish less onerous standing requirements, there are other good reasons to have land use decision processes which do not go before the BOA. For example, there is no reason to have to present a case twice (first before the Planning Board and then before the BOA) as is currently done in many instances. Furthermore, the BOA

has a screwy interpretation (inconsistent with Maryland Rules and inconsistently applied) of how to count the 30 days for appeal from the Planning Board to the BOA—often resulting in cases being kicked out for the appeal to the BOE being filed too late.

Thus, if the Council wants to broaden standing in a meaningful way, by Bill, change the decision-making processes for land-use decisions so that there is only one quasi judicial hearing (and it is not before the BOA) and establish a direct appeal of the resulting decision to the Circuit Court.

This is generally how it was done in PG from the early 1990's to about five years ago. This much more lax standing requirement really opened up the courts to citizens. From the developers perspective, though, this gave citizens way too much access to the courts. About ten years ago they started lobbying to "do things more like Howard" (get rid of taxpayer status as sufficient to establish standing in judicial review cases). The citizens were not watching and a several years ago the requirement that all you had to do to have standing was to be a "taxpayer" in PG was eliminated.



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.

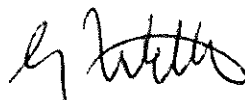
We have no doubt that both of these pieces of legislation are well-intentioned. But if enacted, they will result in unwarranted delays; loss of revenue to the County, nonprofit, and business sectors; and unfairly and unnecessarily burden DPZ and other department staff.

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 1:30 PM
To: CouncilMail
Subject: CB33 - Standing
Attachments: CB33 - Standing.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 CB33.

Thank you for the opportunity to share our concerns.

Leonardo McClarty
Howard County Chamber



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 33 – 2019 – AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions.

Dear Councilwoman Rigby:

The Howard County Chamber believes that public participation and communication to parties potentially affected by new development is critical to a fair and equitable development process. Both commercial and residential inhabitants deserve to have the opportunity to share their affirmations and reservations on new projects. This belief is epitomized in many of Howard County development processes as we often require more public input than our neighboring jurisdictions particularly when it pertains to Downtown Columbia and Village Center development.

It is in this context that we are troubled by the aforementioned proposed legislation. Those potentially aggrieved by a proposed development currently can share their opinions and have standing to appeal decisions to the Board of Appeals and the Courts. To expand this beyond those immediately affected will adversely impact the development process underway. To add additional appeals would lengthen an already arduous process, increase the financial burden on business, undoubtedly delay and potentially deter development that is sorely needed in certain parts of the county.

Moreover, this legislation would certainly slow down Downtown Columbia Development, which would negatively impact the fulfillment of the Downtown Columbia Master Plan, a critical component of Howard County's vision for fiscal health through increased net positive tax revenues. We need fiscally net positive development and business activity to fund our schools, our public safety, and the other services our County residents rely on. We might also see an immediate impact on village center redevelopment, which already has an extremely lengthy approval process.

CB33-2019
June 14, 2019
p. 2

Business and development rely on predictability as some projects are highly volatile and the slight deviation of plan and schedule derails the entire effort. The Chamber wholeheartedly believes in the public participation process. We also believe that while everyone should have the right for their voice to be heard, as they do today, the right to appeal decisions should be limited to those directly impacted, consistent with Maryland State law.

The Howard County Chamber thanks you for the opportunity to share our concerns on the proposed 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,

A handwritten signature in black ink that reads "Leonardo McClarty". The signature is written in a cursive, flowing style.

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 CB33-2019 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: Christopher J. Alleva <jens151@yahoo.com>
Sent: Monday, June 17, 2019 10:45 AM
To: CouncilMail
Subject: CB 33 2019 Written Testimony
Attachments: Public Support CB 33 2019 Standing to Appeal PB Dec06172019.pdf; ZRA 173 Support 08082017.pdf; ZRA 173 Standing PB Recommendation.pdf; Documentation for Howard County code error June 14, 2014.pdf

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

Here are collateral documents in support of CB 33-2019

Public Support CB 33-2019
Public Support ZRA 173
Planning Board Rec. ZRA 173
Code Error Documentation

Thank you

Chris Alleva
10848 Harmel Dr
Columbia, MD 21044
443 310 1974

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: Mitch Saula

Address: 10810 Brazeburn Rd

City: Columbia State and Zip MD 21044

Email: MLSaula@verizon.net Tel.: 410-531-9677

Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: Benjamin Suka

Address: 10810 Braeburn Road

City: Columbia State and Zip Md. 21044

Email: msuka@verizon.net Tel.: 410-531-9677

Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, 33 OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: John Hollida

Address: 10824 Harmel Drive

City: Columbia State and Zip MD 21044

Email: jhollida73@gmail.com Tel.: 410.884.2912

Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, 33 OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: Regina Schless

Address: 10381 Queen Road

City: Coltara State and Zip _____

Email: Regina.Schless@gmail.com Tel.: _____
Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: DAVID FIELDS

Address: 10385 Duem Broward RD

City: Columbia ^{MD} State and Zip 21044

Email: DAVID.M.FIELDS@VERIZON.net Tel.: _____

Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

*This bill establishes criteria for standing to appeal.

*There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.

*Please support this bill. You can submit testimony at the link below.

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, 33 OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: Derek Chatham

Address: 10399 Owen Brown Rd

City: Columbia State and Zip MD 21044

Email: _____ Tel.: _____

Thanks so much!!

Please Support CB33-2019
BILL NO. 33 – 2019
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/ofestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS

THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: Dan Hajdo

Address: 6016 Jamina Downs

Email: westphillydan@yahoo.com Tel.: _____
Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, 33 OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: Donald S. Scarfa Jr.

Address: 10832 Harmel Dr.

City: Columbia State and Zip MD 21044

Email: dscarfajr7@gmail.com Tel.: 443 276 7200

Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: James G. [Signature]

Address: 10564 Overbrook Rd

City Ellicott City State and Zip MD 21043

Email: _____ Tel.: _____

Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

*This bill establishes criteria for standing to appeal.

*There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.

*Please support this bill. You can submit testimony at the link below.

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: TARIC JAWAID

Address: 9700 BOSTON ST.

City: LAUREL State and Zip MD 20723

Email: _____ Tel.: 240-328-8985

Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

*This bill establishes criteria for standing to appeal.

*There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.

*Please support this bill. You can submit testimony at the link below.

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, 33 OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: John Tefft

Address: 5015 Ten Mills Rd

City: Colabris State and Zip MD 21044

Email: / Tel.: 410-738-2771

Thanks so much!!

Please Support Howard County **BILL NO. 33 – 2019**
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, ~~33~~ OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE ~~2~~ ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY ~~3~~ OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION ~~4~~ OR DECISION.

I support CB33-2109 Date: June 16, 2019

Name: BRANDON TRICE

Address: 6250 CARDINAL LN.

City: Columbia State and Zip MD 21044

Email: _____ Tel.: _____

Thanks so much!!

Please Support CB33-2019
BILL NO. 33 – 2019
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, 33 OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS 34 2

THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: Yugl Jessell

Address: 10414 Blue Arrow Ct.

Email: bjessell@gmail.com Tel.: 410-997-7239
Thanks so much!!

Please Support CB33-2019
BILL NO. 33 – 2019
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung
AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, 33 OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS 34 2

THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: Jon Nambal

Address: 12191 Willowville Ct. EC. Md 21042

Email: annapolis1961@gmail Tel.: (410) 854-0587

Thanks so much!

Please Support CB33-2019
BILL NO. 33 – 2019
PUBLIC HEARING JUNE 17, 2019 7 PM
3430 Courthouse Dr.
Ellicott City, MD 21043

Introduced by: Deb Jung

AN ACT amending the Howard County Code by specifying who may appeal Planning Board decisions; and generally relating to Planning Board decisions

***This bill establishes criteria for standing to appeal.**

***There was error in the County Code that effectively barred the door to the courthouse depriving all Howard County citizens of their right to due process.**

***Please support this bill. You can submit testimony at the link below.**

<https://apps.howardcountymd.gov/otestimony/>

Bill Text:

A PERSON QUALIFIED TO APPEAL A PLANNING BOARD DECISION SHALL BE THE OWNER, LESSEE, OR RESIDENT OF ANY PROPERTY THAT IS ADJOINING OR CONFRONTING THE PROPERTY THAT IS 34 2

THE SUBJECT OF THE ACTION OR DECISION; OR THE OWNER, LESSEE, OR RESIDENT OF ANY 1 PROPERTY WITHIN SIGHT, SOUND, OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE 2 ACTION OR DECISION; OR ANY CIVIC ASSOCIATION, HOMEOWNER'S ASSOCIATION, OR PROPERTY 3 OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION 4 OR DECISION.

I support CB33-2109 Date: June 11, 2019

Name: Robert & Kristin DeLauney

Address: 5425 Broadwater Lane Clarksville MD

Email: deLauney2001@yahoo.com Tel.: 410-531-1231

Thanks so much!!

geno8808@outlook.com

From: cjalbraith@aol.com
Sent: Thursday, July 27, 2017 1:31 PM
To: PlanningBoard
Subject: In Support FOR ZRA173

Dear Planning Board:

I am writing in SUPPORT of ZRA 173. It is critical to due process of law in citizens' rights to appeal decisions of the Planning and Zoning Board. Howard County must adhere to both the appearance and the reality of compliance with the Constitution and all applicable laws.

Thank you for your consideration.

Yours truly,
Carol Galbraith, Esq.
10118 Hyla Brook Road
Columbia, MD 21044

geno8808@outlook.com

From: The Krasnicks <krasnicksfamily@aol.com>
Sent: Saturday, July 29, 2017 10:58 AM
To: PlanningBoard
Subject: ZRA 173

I am writing in support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning Decisions. This is a basic right that all citizens are entitled under the Constitution. It is necessary that the County be adhere to the laws.

Jerry Krasnick
6057 Shepherd Square
Columbia, Maryland 21044
443-631-5533

*Jerry Krasnick
President, Banneker Place Homeowners Association
Vice-President, Atholton High School Athletic Boosters
Treasurer, Board Member, Howard County Lacrosse Program*

geno8808@outlook.com

From: The Krasnicks <krasnickfamily@aol.com>
Sent: Saturday, July 29, 2017 10:58 AM
To: PlanningBoard
Subject: ZRA 173

I am writing in support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning Decisions. This is a basic right that all citizens are entitled under the Constitution. It is necessary that the County be adhere to the laws.

Clare Krasnick
6057 Shepherd Square
Columbia, Maryland 21044
443-631-5534

*Jerry Krasnick
President, Banneker Place Homeowners Association
Vice-President, Atholton High School Athletic Boosters
Treasurer, Board Member, Howard County Lacrosse Program*

geno8808@outlook.com

From: MITCHELL SAULA <mlsaula@verizon.net>
Sent: Tuesday, August 1, 2017 8:43 AM
To: PlanningBoard
Subject: ZRA 173

Hello,

I am writing in support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning. I feel it is very important that government on every level be compliant with the laws and rights given to us under the Constitution.

Lisa Saula
10810 Braeburn Road
Columbia, MD 21044

geno8808@outlook.com

From: jlynch14 <jlynch14@verizon.net>
Sent: Wednesday, August 2, 2017 1:23 PM
To: PlanningBoard; jlynch14
Subject: ZRA 173

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon,

I am writing in support of ZRA 173 to clarify and resolve the rights of property owners in Howard County.

I believe adopting this amendment is the appropriate action to define "Aggrieved Person". I also believe it will rightfully reinstate basic rights of the citizens.

Thank you for considering ZRA 173.

John Lynch
2121 Grant Farm Court
Marriottsville , MD 21104

Sent from my Verizon Wireless 4G LTE smartphone

geno8808@outlook.com

From: Jervis Dorton <jervisdorton@yahoo.com>
Sent: Wednesday, August 2, 2017 2:00 PM
To: PlanningBoard
Subject: ZRA 173 - Standing

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Planning Board Members
I am writing in support of ZRA 173 submitted by Chris Alleva. Approval of this amendment will correct the ambiguity that has existed too long in defining what citizens have the right to appeal a Department of Planning & Zoning decision. I urge the Planning Board to approve ZRA 173.
Respectfully
Jervis Dorton
5963 Gales Ln.
Columbia , 21045
Tel. # 410 992 5218

geno8808@outlook.com

From: Ryan Daggie <rdaggie@gmail.com>
Sent: Thursday, August 3, 2017 10:54 AM
To: PlanningBoard
Subject: ZRA 173

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,

I am writing in support of ZRA 173 to resolve citizen's rights to appeal planning and zoning decisions. I feel this is extremely important for our voices to be heard and respected.

Ryan Daggie
4029 Old Columbia Pike
Ellicott City MD 21043

geno8808@outlook.com

From: jlynch14 <jlynch14@verizon.net>
Sent: Wednesday, August 2, 2017 1:23 PM
To: PlanningBoard; jlynch14
Subject: ZRA 173

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon,

I am writing in support of ZRA 173 to clarify and resolve the rights of property owners in Howard County.

I believe adopting this amendment is the appropriate action to define "Aggrieved Person". I also believe it will rightfully reinstate basic rights of the citizens.

Thank you for considering ZRA 173.

John Lynch
2121 Grant Farm Court
Marriottsville , MD 21104

Sent from my Verizon Wireless 4G LTE smartphone

geno8808@outlook.com

From: bc@theprecfectpour.com
Sent: Thursday, August 3, 2017 10:51 AM
To: PlanningBoard
Subject: ZRA 173

Follow Up Flag: Follow up
Flag Status: Flagged

Planning Board HoCoMD

I am writing in support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning Decisions.

I have long understood that this is a basic right that all citizens are entitled under the Constitution. It is imperative that the be faithful to the laws of the land.

thanks,

Barry Coughlin
The Perfect Pour

geno8808@outlook.com

From: Brian England <beengland2046@gmail.com>
Sent: Thursday, August 3, 2017 2:28 PM
To: PlanningBoard
Subject: ZRA 173

I am writing in support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning Decisions. I have long understood that this is a basic right that all citizens are entitled under the Constitution.

It is imperative that County be faithful to the laws of the land.

I have been denied standing even though my property was only a quarter of a mile from the development and in the same FDP! On top this a friend was denied standing and his property joined the proposed development!!!

This is despicable! It also cost me and a friend hundreds of thousands of dollars to fight this!

This is a burden that "small business's" should not have to bear!

Brian England, President
British American Auto Care
Columbia. Md 21044

410 952 6856

Sent from my iPad

geno8808@outlook.com

From: Avraham Azrieli <avraham@azrielibooks.com>
Sent: Monday, July 31, 2017 4:43 PM
To: PlanningBoard
Subject: In Support of ZRA 173 Petition

Dear Chair,

I am writing in support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning Decisions. (Specifically, in support of the Petition dated August 30, 2016 by Christopher J. Alleva).

The Petition is worthy as it is aimed at securing a basic right for all citizens, to which they are entitled under the charter. It is imperative that County be faithful to the laws of the land.

<http://cc.howardcountymd.gov/Zoning-Land-Use/ZRA-Cases-Chart>

Sincerely,
Avraham Azrieli
6459 S. Wind Cir., Columbia, MD 21044
410-531-5487

geno8808@outlook.com

From: Howard Johnson <hlj@comcast.net>
Sent: Monday, July 31, 2017 9:48 PM
To: PlanningBoard
Subject: Support of ZRA 173

Hello Board Members

I am writing in support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning Decisions.

I have long understood that this is a basic right that all citizens are entitled under the Code as noted per the petition. It is imperative that County be faithful to the laws of the land.

Regards

Howard Johnson

6241 Latchlift Ct

Elkridge MD21075

410 796 2271

hlj@comcast.net

geno8808@outlook.com

From: Chao Wu <superbwu@gmail.com>
Sent: Sunday, July 30, 2017 10:44 PM
To: PlanningBoard
Subject: support ZRA 173

Dear County Planning Board,

I am writing in support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning Decisions.

I believe residents of interest should have the same right as other involved parties in land development and community engagement.

Thanks.

Chao

--

--

Chao Wu, *PhD*
Council Representative and Board of Director
Columbia Association
Tel: 240-481-9637, Website: <http://chaowu.org>

Note: The opinion in the email does not represent the opinion of the Board of Columbia Association unless it is clearly stated.

geno8808@outlook.com

From: Rick Levitan <Ricklevitan@verizon.net>
Sent: Thursday, July 27, 2017 1:58 PM
To: PlanningBoard
Subject: ZRA - 173 - SUPPORT

Dear Planning Board Members:

I am writing in strong support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning Decisions and most importantly have a clear definition for what constitutes "standing".

Clearly defining an aggrieved person is critically important to a fair and open process with regards to zoning and development matters. I have had personal experience on both sides of the argument – trying to develop property and having citizens oppose who I did not think should have "standing" but could appeal and voice their concerns, as well as being involved in other real estate issues where I thought someone who clearly had standing was denied his right to oppose because of fancy lawyer tricks.

The citizens of Howard County deserve to be heard fairly. If a zoning or development matter is handled correctly and a board, panel or hearing examiner are given the opportunity to take all sides into the equation, the right decision will be made.

It's only when people are kept out of the process, that judgements can be in err.

Rick Levitan
7248 Cradlerock Way
Columbia, MD 21045
Cell: 301-370-4055
www.autostreamcarcare.com

geno8808@outlook.com

From: Paul Verchinski <verchinski@yahoo.com>
Sent: Sunday, July 30, 2017 8:17 PM
To: PlanningBoard
Cc: Paul Verchinski
Subject: ZRA 173

you will be considering ZRA 173 this week. I ask that you support this ZRA which would resolve citizen rights in appealing Zoning and Planning Board decisions.. This is a basic constitutional right.

Paul Verchinski
5475 Sleeping Dog Lane
Columbia, MD 21045

410.997-3879

geno8808@outlook.com

From: NARESH KUMAR <nareshnnkumar@yahoo.com>
Sent: Thursday, July 27, 2017 3:00 PM
To: PlanningBoard
Subject: ZRA 173

My name is Naresh Kumar and I am R/O 6804 Creekwood Court,
Clarksville MD.21029.

I am writing in support of ZRA 173 to resplve citizen'sright to
appeal Planning and Zoning Decisions.

Thanks

Naresh Kumar

geno8808@outlook.com

From: Joe Duncan <wjoeduncan@yahoo.com>
Sent: Wednesday, August 2, 2017 11:25 AM
To: PlanningBoard
Subject: ZRA 173

Follow Up Flag: Follow up
Flag Status: Flagged

My name is Joe Duncan. Address is 8850 Gorman Road, Laurel, Maryland.

This is to inform you that I support ZRA 173.

It is reasonable and *proper* to correct an error in the County code. It is also proper to provide any citizen the right to appeal Planning and Zoning executive decisions if that citizen, in any way, feels wronged by the decision.

I appreciate the opportunity to provide my views on this proposed Amendment.

geno8808@outlook.com

From: JOHN SMITH <jdsmith51@verizon.net>
Sent: Wednesday, August 2, 2017 12:01 PM
To: PlanningBoard
Subject: ZRA 173

ZRA 173 before the Howard County Maryland Planning Board
August 3, 2017

Planning Board Members,

I am writing in support of ZRA 173 to resolve citizen's rights to appeal Planning and Zoning Decisions. It is a basic right granted by the United States Constitution, and the Howard County government should be faithful to the laws of the land.

In order to appeal a Planning Board or DPZ ruling, one has to be an especially aggrieved party. As it stands now, it is almost impossible for some someone to be considered an aggrieved party in Howard County. The standards currently are stringent (one who has a specific financial or property interest that is affected by the judgment or decision in a manner that is different or greater than the general public), yet extremely vague. This ZRA is intended to bring clarity to the process by defining eligibility standards.

Thank you for your consideration.

John David Smith

7425 Swan Point Way
Columbia, MD 21045
410-807-2010

geno8808@outlook.com

From: Lisa Markovitz <lmarkovitz@comcast.net>
Sent: Thursday, August 3, 2017 11:25 AM
To: PlanningBoard
Subject: The People's Voice testimony on ZRA 173 for tonight
Attachments: zra173.docx

Follow Up Flag: Follow up
Flag Status: Flagged

This email has been checked for viruses by Avast antivirus software.
<https://www.avast.com/antivirus>

Nichole M. Galvin, Esquire
Fulton, Maryland 20759
(301) 575-0317

Members of the Howard County Planning Board:

I am an attorney licensed to practice law and a resident of Howard County, Maryland and I work at a firm in the county. I am testifying as an individual and not on behalf of a client or my employer.

While attending law school, I worked as a clerk for the Howard County Board of Appeals. At that time, in 1999 and 2000, there was no hearing examiner so the Howard County Board of Appeals met two nights a week. I attended the hearings and generally assisted the board by, among other things, recording the proceedings, taking minutes and preparing transcripts for appeals.

During that three-year period, I do not recall a single case where the issue of standing was raised. I suspect the reason was that the majority of the cases were conditional use (then called special exceptions) and variances. The few cases where the board was hearing an "appeal", then called departmental appeals, were primarily appeals from zoning violations and decision by the Howard Department of Planning and Zoning (e.g. waivers).

Things have changed a lot. The Rouse Company is no more, and Columbia is in a state of transition, a fact acknowledge in General Plan, and with those change came uncertainty that needs to be addressed. I am here, as a citizen of the County, not to advocate for what the definition of "specially aggrieved" should but to argue that there needs to be a clear definition.

Let me explain. In 2012, I represented a clients in a matter before the Howard County Planning Board. I thought I was familiar enough with the process to handle the appeal but how wrong I was. Both the Hearing Examiner and the Board of Appeals challenged my clients' standing to appeal *sua sponte* (on the Board's own motion). The Hearing Examiner found there was standing. The Board of Appeals found they did not have standing. The Circuit Court found they had standing to file a petition for judicial review of the Board of Appeals' decision but then affirmed the Board of Appeals' decision that the clients' lacked standing. Finally, the case was appealed to the Court of Special Appeals. I did not handle that appeal, but the Court's decision was particularly troubling.

The Court of Special Appeals said it best in that case, *AMHA, LLC v. Howard County Board of Appeals* when it said:

"Standing is often considered to be "one of the most amorphous (concepts) in the entire domain of public law." *Flast v. Cohen*, 392 U.S. 83, 99, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968). [More critically, the doctrine of standing has been condemned as "permeated with sophistry," "a word game played by secret rules,"].

AMHA, LLC v. Howard County Board of Appeals, 2015 Md. App. 1031, *27.
The Court addressed the question of whether it was error for the Board of Appeal to use the same standard articulated in the seminal standing case, *Byniarski v. Montgomery Cnty. Bd. of Appeals*, 247 Md. 137, 230 A.2d 289 (1967) in determining the meaning of the phrase "[a]ny person specially aggrieved" in the Zoning Regulations [HCC § 16.900 (j)(2)(iii)]. The Court held that it was not error because the Board has broad discretion to construe its own regulations, but perhaps most troubling was the Court's holding that:

"the Board of Appeals was not bound to construe the term "person specially aggrieved" in accordance with the Court of Appeals' holdings in *Bryniarski*, and *Ray*. Indeed, the Board of Appeals could have promulgated a different standard for defining special aggrievement, or the Board of Appeals could have construed its standard differently so long the construction was reasonable enough to survive our *de novo* review of its legal conclusions.

The Court noted that § 16.103(b) of the Howard County Code was not helpful in determining the meaning of "specially aggrieved" in the Howard County Zoning Regulations:

[§ 16.103(b) of the] HCC seemingly attempts to articulate a standard for special aggrievement by providing, "[f]or purposes of this section the term 'any person specially aggrieved' includes but is not limited to [a class of individuals that] meet the criteria for aggrievement set forth in subsection 16.103(b) of this title." Unfortunately, subsection 16.103(b) offers us no guidance because its provisions are wholly unrelated to whether an individual is specially aggrieved.


In deciding whether it was error for the Board to apply the aggrievement standard from *Bryniarski*, the Court of Special Appeals ultimately decided it was not:

Accordingly, it may have been within the purpose of HCC § 16.900(j)(2)(iii) to adopt the standard set forth in *Bryniarski*. We, therefore, hold that the Board of Appeals reliance on *Bryniarski* and *Ray*, when construing the term "specially aggrieved" as it appears in HCC § 16.900(j)(2)(iii), although not necessarily required, was not error.

The Court ultimately upheld the Board's decision in that case. The Court's decision, however, is important in that it highlights the need for clarity—a clear definition because as it stands now, the Court has confirm that there is no set standard so it is within the Board's discretion to construe its own rules. This creates confusion for citizens and does not provide a clear standard by which they know whether they are allowed to participate. Such an ambiguity leaves it to the whim of the particular board or hearing examiner and result in citizens spending time and money preparing a case (even hiring an attorney), who ultimately will never have their case heard—a fact they could not have known with certainty before the hearing because there is no clear definition.

In conclusion, I am here, as a citizen of the County, not to advocate for what the definition of "specially aggrieved" should be, but to appeal to you to provide clarity, which will save everyone-petitioners and protestants alike a lot of time and money. Thank you for your time.

Sincerely,



Nichole M. Galvin

From: Boone, Laura
Sent: Thursday, August 3, 2017 4:35 PM
To: Chris Alleva
Subject: FW: ZRA-173

From: Jo McLaughlin [mailto:bluebirds09@yahoo.com]
Sent: Thursday, August 03, 2017 4:24 PM
To: PlanningBoard <PlanningBoard@howardcountymd.gov>
Subject: ZRA-173

The stench from the roofing project at Centennial High School is overwhelming...and neighbors (individually and/or collectively) don't have the right to be heard?

Government is over-reaching.

Please LISTEN and evaluate well, with all good due diligence.

Thank you!

From: Boone, Laura
Sent: Thursday, August 3, 2017 4:42 PM
To: Chris Alleva
Subject: FW: ZRA 173

From: Dan O'Leary [mailto:danielol12832h@gmail.com]
Sent: Thursday, August 03, 2017 4:42 PM
To: PlanningBoard <PlanningBoard@howardcountymd.gov>
Subject: ZRA 173



August 3, 2017

Planning Board of Howard County

Dear Members of the Planning Board

Re: ZRA 173

The GHCA is in full support of ZRA 173 in its intent to to preserve the citizens' right to appeal Planning and Zoning Decisions.

All citizens are entitled by Article I of the Constitution to be heard in whatever forum, especially governmental forums.

If you are dissatisfied with some of its wording, amend it and send it post-haste to Council for passage.

Dan O'Leary
Chairman of the Board
GHCA

1 **CHRISTOPHER J. ALLEVA,** * **BEFORE THE**
2 **PETITIONER** * **PLANNING BOARD OF**
3 **ZRA-173** * **HOWARD COUNTY, MARYLAND**

4 * * * * *

5 **MOTION:** *To recommend denial of ZRA-173 according to the DPZ recommendation, and to*
6 *recommend that DPZ and the County Council consider the issue of establishing*
7 *standards for aggrievement.*

8 **ACTION:** *Recommended denial for ZRA-173 and recommended approval that DPZ and the*
9 *County Council consider the issue of establishing standards for aggrievement.;*
10 *Vote 3 to 0.*

11 * * * * *

12 **RECOMMENDATION**

13 On August 3 ,2017, the Planning Board of Howard County, Maryland, considered the petition of
14 Christopher J. Alleva to amend Section 130.0.A. in the Howard County Zoning Regulations to define
15 eligibility standards for entities to be considered an "aggrieved person" in a Hearing Authority appeal case,
16 and also to specify that decisions of the Planning Board may be appealed to the Hearing Authority.

17 The Planning Board considered the petition, the Department of Planning and Zoning Technical Staff
18 Report and Recommendation, and reviewing agency comments. The Department of Planning and Zoning
19 recommended denial of the petition based on finding that proposed amendments conflict with the County
20 Code, which addresses appeals of Planning Board decisions.

21
22 Testimony

23 The Petitioner stated that the purpose of the amendments is to correct an error that exists in the
24 County Code regarding appeals of decisions related to zoning and land development matters. Mr. Alleva
25 reviewed a number of Board of Appeals cases that have been dismissed due to lack of standing and asserted
26 that the code needs to clearly define who can stand for appeal. Mr. Alleva requested that the Board
27 recommend approval of ZRA-173 and that the County Council correct the error in the County Code and
28 define who is aggrieved. Nichole Galvin, William Ingles, Stuart Kohn, and Jean Wilson testified in support of
29 establishing eligibility standards for aggrieved persons to provide clarity and ensure citizen's appeal rights.

30
31 Board Discussion and Recommendation

32 In work session, the Board concurred that a Zoning Regulation Amendment is not the appropriate
33 process to correct the error in County Code. Also, a Board member suggested that the proposed definition of
34 aggrieved person is too broad.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Motion and Vote

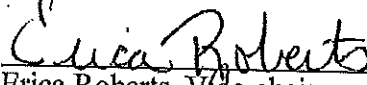
Mr. Coleman made the motion to recommend denial of ZRA-173 and recommended that DPZ and the County Council look at defining aggrieved person and clean up references in code so that they point to correct sections. Ms. Roberts seconded the motion. The motion passed by a vote of 3 to 0.


For the foregoing reasons, the Planning Board of Howard County, Maryland, on this 7th day of September, 2017, recommends that ZRA-173, as described above, be DENIED, and recommends that DPZ and the County Council consider the issue of establishing standards for aggrievement.

HOWARD COUNTY PLANNING BOARD

ABSENT


Phillips Engelke, Chair


Erica Roberts, Vice-chair


Delphine Adler


Ed Coleman

ATTEST:


Valdis Lazdins, Executive Secretary

Howard County, Maryland, Code of Ordinances >> - CODE >> TITLE 16 - PLANNING, ZONING AND SUBDIVISIONS AND LAND DEVELOPMENT REGULATIONS >> SUBTITLE 9. PLANNING BOARD >>

SUBTITLE 9. PLANNING BOARD ^[7]

Sec. 16.900. Planning Board.

Sec. 16.900. Planning Board.

- (a) *General Provisions.* General provisions applicable to this Board are set forth in subtitle 3, "Boards and Commissions," of title 6, "County Executive and the Executive Branch," of the Howard County Code.
- (b) *Number of Members.* The Planning Board shall have five members.
- (c) *Qualifications.* All members of the Planning Board shall be residents of Howard County.
- (d) *Executive Secretary.* The Director of Planning and Zoning or the Director's designee shall serve as Executive Secretary of the Planning Board and shall attend all meetings of the Board.
- (e) *Meetings.* The Planning Board shall hold regular monthly meetings. Special meetings may be held at any time, at the call of the Chair.
- (f) *Records.* The Planning Board shall keep a record of its findings, recommendations, determinations and decisions. The Planning Board shall keep minutes of its proceedings. The records shall be filed with the Department of Planning and Zoning, which shall maintain them.
- (g) *Outside Assistance.* With the approval of the County Executive, the Planning Board may retain legal counsel or consultants as necessary to carry out its function and duties and responsibilities.
- (h) *Studies.* The Planning Board may initiate studies related to the general duties and responsibilities and functions of the Board. For the purpose of conducting such studies, the Board shall have the assistance of the staff of the Department of Planning and Zoning, as may be provided in the budget.
- (i) *Hearings.* Prior to making recommendations to the County Council on adoption of the general plan, the Planning Board shall hold at least one public hearing at which interested persons shall be afforded a reasonable opportunity to be heard regarding the general plan. In addition, prior to making recommendations to the County Council on adoption of comprehensive zoning, the Planning Board shall hold at least one public hearing at which interested persons shall be afforded a reasonable opportunity to be heard regarding the comprehensive zoning. In both cases, at least 30 days' notice of the time and place of the hearing shall be on the County's website. The Planning Board may hold hearings on any matter pending before it and shall hold hearings upon written request of the County Executive or on resolution of the County Council and as required by law and regulations.
- (j) *Duties and Responsibilities.* The Planning Board shall carry out all duties and responsibilities assigned to it by law.

- (1) *Recommendations on Planning and Zoning:*
 - (i) *Recommendations.* The Planning Board shall make recommendations to the County Council and the Zoning Board on all matters relating to:

The Planning and Zoning of the County, the adoption and amendment of regulations regarding the Planning and Zoning of the County, and amendments to the zoning map or zoning regulations.
 - (ii) *Time frame.* The Planning Board shall make its recommendations within a reasonable period of time, but in any event no more than 45 days after it hears the petition unless the Zoning Board or the County Council allow a longer period of time for the Planning Board to make its recommendations.
- (2) *Decision making:*
 - (i) The Planning Board shall make decisions with respect to matters submitted to it pursuant to the laws, rules, regulations, and ordinances of the County.
 - (ii) The Planning Board has authority regarding street naming and house numbering pursuant to subtitle 4, "Street Names and House Numbers" of [this] title 16 of the Howard County Code.
 - (iii) Any person specially aggrieved by any decision of the Planning Board and a party to the proceedings before it may, within 30 days thereof, appeal said decision to the Board of Appeals in accordance with section 501 of the Howard County Charter. For purposes of this section the term "any person specially aggrieved" includes but is not limited to a duly constituted civic, improvement, or community association provided that such association or its members meet the criteria for aggrievement set forth in subsection 16.013(b) of this title.
- (3) *Recommendations on capital programs and capital budgets:*
 - (i) *Recommendations.* Each year the Planning Board shall review the proposed capital program and any new or substantially changed capital project, pursuant to law. It shall prepare comments and recommendations on the impact of the proposed capital program on the County general plan and the growth of the County and submit these comments and recommendations to the County Executive, with a copy to the County Council.
 - (ii) *Time frame.* The proposed capital programs for the following fiscal year shall be submitted to the Planning Board at least two months before the County Executive is required to file the County's proposed capital program. The Planning Board shall submit its comments and recommendations within one month of receiving the proposed programs.
- (4) *General plan guidelines:*
 - (i) *Preparation of guidelines.* Within five years from the adoption of this comprehensive rezoning plan, the Planning Board shall prepare general guidelines to be used by the Department of Planning and Zoning in the preparation and/or revision of the general plan.
 - (ii) *Adoption of guidelines.* The County Council shall adopt the guidelines by resolution prior to the formulation of the general plan utilizing these guidelines.
- (5) *Other recommendations.* At the directive of the County Executive or by resolution of the County Council, the Planning Board shall review and make recommendations on any matter related to planning.

Subject: Code error
From: Christopher J. Alleva (jens151@yahoo.com)
To: earl.adams@dlaplper.com;
Date: Wednesday, June 11, 2014 5:03 PM

More info on the Code error

On Tuesday, June 10, 2014 2:40 PM, "Tolliver, Sheila" <STolliver@howardcountymd.gov> wrote:

Chris (aka Music Man),

We've traced the problem and have referred it to the Office of Law. Not sure if they can correct this through the Code company without legislation, given the history. If not, we'll put in a bill to correct. Thanks for your attentive eye.

Sheila

From: Tolliver, Sheila
Sent: Tuesday, June 10, 2014 2:35 PM
To: Vannoy, James
Cc: Nolan, Margaret Ann; Meyers, Jeff
Subject: Code error

Jim,

A constituent found an error in a reference in the Code. I'm bringing it to your attention, as the Office of Law works with the code company on such matters. If you'd rather we just correct legislatively, let me know.

The problem is the reference to "subsection 16.013(b)" in subsection 16.900 J(2)(iii). Jeff has researched the history and found the following series of actions:

- Subsection 16.900 J(2)(iii) was adopted in CB 13-1990; however, the reference at that time was to "subsection 16.103(b)".
- Apparently at some point, perhaps by a typo, 16.103 was changed to 16.013, which doesn't exist.
- CB 121-1992 repealed and reenacted subsection 16.100 as part of a larger bill. The newly adopted subsection 16.103 (b) does not deal with the subject matter referenced in the

contemporary subsection 16.900 J(2)(iii). The cross-reference in 16.900 was not changed as part of that bill.

A word search in the current code fails to find any criteria elsewhere in the code for what constitutes an association eligible to be an aggrieved party. We think, therefore, that the entire sentence in subsection 16.900 that erroneously references the non-existent subsection 16.013 (b) should be stricken.

Please let us know how best to remedy.

Sheila Tolliver
Administrator
Howard County Council
410 313-2001

Howard County, Maryland, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> - HOWARD COUNTY CHARTER >> ARTICLE V. BOARD OF APPEALS >>

ARTICLE V. BOARD OF APPEALS ^[3]

Section 501. The County Board of Appeals.

Section 502. Board of Appeals hearing examiner.

Section 501. The County Board of Appeals.

- (a) *Appointment; term; compensation.* The County Board of Appeals shall consist of five registered voters and residents of the County appointed by the Council. Appointees shall serve overlapping terms of five years from the first day of January of the year of their appointments, or until their successors are appointed. Vacancies, except those at the expiration of a term, shall be filled in the same manner as the original appointment and for the unexpired term. No member shall be reappointed after having served eight consecutive years immediately prior to reappointment. No more than three members shall be registered with the same political party. The members of the Board shall be paid at the rate of Twelve Hundred Dollars (\$1,200.00) per year unless such compensation be changed as provided in Section 501(f) of this article. Members of the Board shall receive reasonable and necessary expenses as may be provided in the budget.
- (b) *Powers and functions.* The Board of Appeals may exercise the functions and powers relating to the hearing and deciding, either originally or on appeal or review, of such matters as are or may be set forth in Article 25A, Section 5(u) of the Annotated Code of Maryland, excluding those matters affecting the adopting of or change in the general plan, zoning map, rules, regulations or ordinances.
- (c) *Rules of practice and procedure.* The Board of Appeals shall have authority to adopt and amend rules of practice governing its proceedings which shall have the force and effect of law when approved by legislative act of the Council. Such rules of practice and procedures shall not be inconsistent with the Administrative Procedure Act of the Annotated Code of Maryland. The rules may relate to filing fees, meetings and hearings of the Board, the manner in which its Chairperson shall be selected and the terms which he shall serve as Chairperson and other pertinent matters deemed appropriate and necessary for the Board. Three members of the Board shall constitute a quorum of the Board, and its hearings shall receive public notice as required by law. All hearings held by the Board shall be open to the public, and provision shall be made for all interested citizens and citizens groups to be heard. The Board shall cause to be maintained complete public records of its proceedings, with a suitable index.
- (d) *Appeals from decisions of the Board.* Within thirty days after any decision of the Board of Appeals is entered, any person, officer, department, board or bureau of the County, jointly or severally aggrieved by any such decision, may appeal to the Circuit Court for Howard County, in accordance with the Maryland Rules of Procedure. The Board of Appeals shall be a party to all appeals and shall be represented at any such hearing by the Office of Law.

- (e) *Employees of the Board.* The Board may appoint, within budgetary limitations, such employees, and the Executive shall make available to the Board such services and facilities of the County, as are necessary or appropriate for the proper performance of its duties.
- (f) *Implementing legislation.* The powers and functions of the Board of Appeals as herein provided for shall be defined by implementing legislation heretofore or hereafter enacted by the Council, subject to and to the extent required by applicable State law. The Council may by legislative act increase the compensation of the members of the Board of Appeals as provided in Section 501(a) of this Article and thereafter decrease such compensation; provided, however, that no reduction shall affect the compensation of a member of the Board of Appeals during his or her current term, and in no event shall the council have the power to decrease the compensation of members of the Board below the figure provided in this Charter. To the extent permitted by State law, the Council shall also have the power, by legislative act, to prescribe other appeals to be heard by, or to limit the jurisdiction of, the Board of Appeals in addition to those specified in this Article.

Editor's note—

An amendment to § 501 proposed by C.B. 89, 1980 was approved at an election held Nov. 4, 1980, and became effective Dec. 4, 1980. An amendment proposed by Res. No. 124, 1982, was approved at an election held Nov. 2, 1982, and became effective Dec. 2, 1982. An amendment to subsections (c) and (f) proposed by Res. No. 126, 1996 was approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996. An amendment to subsection (c) proposed by Res. No. 103, 2000 was approved at an election held November 7, 2000, and became effective December 7, 2000. An amendment to § 501(b) proposed by Res. No. 100, 2012 was approved at an election held on Nov. 6, 2012, and became effective on Dec. 6, 2012.

Section 502. Board of Appeals hearing examiner.

The County Council may appoint hearing examiners to conduct hearings and make decisions concerning matters within the jurisdiction of the Board of Appeals. Decisions of an examiner may be appealed to the Board of Appeals as provided by law. The Council shall establish by legislative act the duties, powers, authority and jurisdiction of any examiner appointed under this section. An examiner shall be a member in good standing of the Bar of the Maryland Court of Appeals and at the time of appointment shall have knowledge of administrative and zoning law, practice, and procedure. An examiner may be removed from office by vote of two-thirds of the members of the Council.

Editor's note—

An amendment repealing § 502, proposed by C.B. 66, 1980, was approved at an election held Nov. 4, 1980, and became effective Dec. 4, 1980.

Subsequently, an amendment proposed by Res. No. 103, 2000, approved at election November 7, 2000 and effective December 7, 2000, added a new § 502 as set out herein.

FOOTNOTE(S):

— (3) —

Editor's note— An amendment to art. V proposed by Res. No. 116, 1996 was approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996. [\(Back\)](#)

Sayers, Margery

From: Jeff Neamatollahi <romasjeff@gmail.com>
Sent: Monday, June 17, 2019 10:37 AM
To: CouncilMail
Subject: Support CB 33 2019

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

My name is Jeff Neamatolla

I live at 3004 Patuxent Overlook
Ellicott city

I support The standing bill.

Thank you

Sayers, Margery

From: Rigby, Christiana
Sent: Monday, June 17, 2019 10:17 AM
To: Sayers, Margery
Subject: FW: CB 33-2019

From: Paul Revelle <paul.revelle@gmail.com>
Sent: Saturday, June 15, 2019 7:54 PM
To: Walsh, Elizabeth <ewalsh@howardcountymd.gov>; Yungmann, David <dyungmann@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>; Jones, Opel <ojones@howardcountymd.gov>; Jung, Deb <djung@howardcountymd.gov>
Subject: CB 33-2019

[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,

I am concerned about the use of the term vicinity in this legislation. It seems fair and clearly worded that confronting or adjoining property residents, owners and lessees would have a right to appeal. The sight, smell and sound test isn't as clearly worded as adjoining or confronting but still seems fair. But awarding the same right of appeal to civic associations within the vicinity is neither clearly worded nor fair.

Why not stop at the sight, smell and sound test? These owners, residents and tenants would seem to have the most valid basis for appeal. I favor the least restrictive or invasive legislative solution to a problem, if one is required. Deciding on what vicinity is (necessarily arbitrary since there is no physical basis) invites more problems and frustration for all involved.

Paul Revelle

Sayers, Margery

From: Walsh, Elizabeth
Sent: Monday, June 17, 2019 12:41 PM
To: Sayers, Margery
Cc: Thompson, Sjori
Subject: FW: CB 33-2019

Morning,

Just wanted to forward this testimony as it was sent to individual council members versus council mail ☺



Karina Fisher
Special Assistant to Council Member Liz Walsh
Serving District 1

George Howard Building
3430 Court House Drive
Ellicott City, MD 21043
410.313.2001

kfisher@howardcountymd.gov

[Web](#) | [Facebook](#) | [Twitter](#)

From: Paul Reville <paul.reville@gmail.com>
Sent: Saturday, June 15, 2019 7:54 PM
To: Walsh, Elizabeth <ewalsh@howardcountymd.gov>; Yungmann, David <dyungmann@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>; Jones, Opel <ojones@howardcountymd.gov>; Jung, Deb <djung@howardcountymd.gov>
Subject: CB 33-2019

[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,

I am concerned about the use of the term vicinity in this legislation. It seems fair and clearly worded that confronting or adjoining property residents, owners and lessees would have a right to appeal. The sight, smell and sound test isn't as clearly worded as adjoining or confronting but still seems fair. But awarding the same right of appeal to civic associations within the vicinity is neither clearly worded nor fair.

Why not stop at the sight, smell and sound test? These owners, residents and tenants would seem to have the most valid basis for appeal. I favor the least restrictive or invasive legislative solution to a problem, if one is required. Deciding

on what vicinity is (necessarily arbitrary since there is no physical basis) invites more problems and frustration for all involved.

Paul Revelle

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 33-2019 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: Christopher J. Alleva <jens151@yahoo.com>
Sent: Monday, June 17, 2019 3:14 PM
To: CouncilMail
Subject: Baltimore Sun Editorial 2011
Attachments: Howard County Legal Standing 2011 Balt Sun.pdf

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

Here is an Baltimore Sun Editorial from 2011 Advocating fixing the code.

Please put this in the CB 33-2019 record.

Thanks,

Chris Alleva

Court decision leaves core question unresolved

AUGUST 25, 2011

For all intents and purposes, the story of the Plaza Residences was finished a long time ago, but the state's highest court has written a disappointing epilogue.

The Plaza was to be a 22-story condo building in Columbia's Town Center. Supporters of the project hailed its potential for energizing the local economy and broadening the county's tax base. Opponents argued it would overwhelm roads, schools and the sewers and would constitute a lakefront eyesore.

The economic nosedive of three years ago and the troubles of the developer, WCI Communities, effectively ended the debate. WCI scrapped the project and put the land up for sale. Meanwhile, the County Council passed comprehensive legislation governing the redevelopment of Town Center, including a provision capping the height of buildings at nine stories. That provision would apply to any future development on the erstwhile Plaza site.

The Court of Appeals' Aug. 19 decision won't make any difference to the skyline now, but it leaves unresolved the question of whether the plaintiffs in the case — or in similar cases in the future — actually have the right to take such matters to court.

When the county approved the project, four Columbia residents who opposed it took it to the Board of Appeals, the Court of Special Appeals and finally the Court of Appeals, Maryland's highest court. Its decision last week faulted the Board of Appeals for not ruling definitively on the question of whether each of the four plaintiffs — including one who lives next door to the Plaza site — could be adversely affected by the project and therefore had the legal "standing" required to sue, and sent the matter back to the board for it to resolve.

The project as conceived, however, is no longer possible, so the board isn't likely to consider the case again. So we continue to wait for someone — the legislature, the courts — to resolve this fundamental question.

Copyright © 2015, The Baltimore Sun

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 CB33 – Expanding standing to appeal Planning Board decisions

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 33. This bill makes significant changes to standing requirements in the County Code, unnecessarily expanding who can appeal Planning Board decisions far beyond what is settled in Maryland law.

Current Howard County law, which is consistent with established state precedent, requires that a person challenging a Planning Board decision be “specially aggrieved” by the decision, as well as an existing party to the proceedings before the Planning Board. Essentially, Planning Board decisions can only be challenged by people who are actually affected by the decision, and have actively participated in the public planning and approval process. This helps ensure that valuable resources aren’t spent on frivolous challenges, and keeps the process moving as efficiently as possible for the parties involved.

This measure would expand those requirements to include anyone who owns or lives on property that adjoins the project in question; anyone who owns or lives on property within sight, sound, or smell of the project in question; and any civic association, homeowner’s association, or property owner’s association “in the vicinity” of the project in question.

This expansion enables people to join the dispute who have not experienced actual harm; a property owner is not adversely affected simply because they live near a potential project, but this measure would allow them to get involved anyway. Under this new rule, a neighbor who won’t actually experience harm from the project will be allowed to protest it simply because they don’t like it – even though that project has already gone through months, if not years, of analysis, preparation, applications, involvement from experts, approvals from multiple County departments, and finally, approval from the Planning Board. This gives one unhappy but unharmed neighbor the ability to derail a process designed to ensure that any changes made to our neighborhoods are legal and in the best interests of the environment, the County and its citizens.

As a result, members of the public lose the incentive to participate in the public process at an appropriate time. An individual could choose not to attend the numerous meetings and hearings that take place prior to the Planning Board’s ultimate decision, and still file an appeal. If anyone can file an appeal, there is no incentive to spend the time to engage during the planning and approval process. The right to appeal should be reserved for parties of record that have established their opposition through the public approval process.

A property owner should have a right to protect his or her property rights. A person who has been directly harmed by a government decision should have an avenue to address that harm. We already have a system that protects both of these people. Expanding standing to this degree only enables parties who have not actually been harmed, and whose rights are not actually affected, to insert themselves into an already-lengthy process simply on principle. Doing so is inefficient and unnecessary. The MBIA respectfully requests that you vote NO to Council Bill 33-2019.

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".

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

Sayers, Margery

From: AMRAN PASHA <amranpasha@aol.com>
Sent: Monday, June 17, 2019 3:59 PM
To: CouncilMail
Subject: Council Bill 33-2019/Legal Standing to Appeal Planning Actions to County Appeals Board

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

My name is Amran Pasha, I live at 14456 Triadelphia Mill Road, Dayton MD 21036. I have been a resident of Howard for 18 years. I invest and operate businesses and I have had investments in commercial real estate in Howard County, notably, the Atholton Shopping Center in Columbia.

Several years ago, I appealed my dismissal for lack of standing to the Special Appeals Court of Maryland. As you know, there is an error in the code. In my case the Court called it a "legislative mystery," Nevertheless, the Court ruled that the Board of Appeals could make up there own standard so long as it was reasonable and the dismissal of my appeal was upheld.

This bill isn't about the citizens vs. business, this bill address a real need to establish a clear criteria that every citizen, property and business can rely.

Therefore, I support CB 33-2019

Sayers, Margery

From: D Boulton <ddboulton@verizon.net>
Sent: Monday, June 17, 2019 3:50 PM
To: CouncilMail
Subject: CB 33-20-2019

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

I support CB 33-2019 as introduced by Councilperson Deb Jung. The ability of citizens to offer an advisory role in decisions made by government entities is fundamental to our democracy. Please get behind Deb's bill.

Dick Boulton
4669 Hallowed Stream
Ellicott City MD 21042
410-884-2964
ddboulton@verizon.net

Sayers, Margery

From: Rigby, Christiana
Sent: Monday, June 17, 2019 5:41 PM
To: Sayers, Margery
Subject: FW: Tonight's Testimony on CB 33-2019
Attachments: CB 33-2019 by Deb Jung.docx

From: Lloyd Knowles <elizlloyd@comcast.net>
Sent: Monday, June 17, 2019 2:54 PM
To: Walsh, Elizabeth <ewalsh@howardcountymd.gov>; Jones, Opel <ojones@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>; Jung, Deb <djung@howardcountymd.gov>; Yungmann, David <dyungmann@howardcountymd.gov>
Subject: Tonight's Testimony on CB 33-2019

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

LLOYD G. KNOWLES
5561 SUFFIELD COURT
COLUMBIA, MD 21044
410-302-8841

June 17, 2019

To: Chair and Members of the Howard County Council
Re: CB 33-2019

I support the adoption of CB 33-2019 as introduced by Councilperson Deb Jung.

The Constitution of the United States provides that the right to petition our government shall not be abridged. That is the basic democratic principle supporting my testimony. In fact, with this letter to you I am doing just that. And you accept my testimony and treat it for what it is worth without requiring any qualifying test. I thank you for this opportunity to share my opinion and regret that an unforeseen family issue prevents my attendance at tonight's public hearing.

It is beyond my comprehension why the rules of procedure of a lower-ranking body in the county structural hierarchy (the Planning Board) should be allowed to require a much stricter test to petition grievances—i. e., "Standing."

For the betterment of our society the rules should be changed and will be changed with the adoption of CB 33-2019.

Sincerely,

Lloyd Knowles

Sayers, Margery

From: Paul Verchinski <verchinski@yahoo.com>
Sent: Tuesday, June 18, 2019 9:35 PM
To: CouncilMail
Subject: CB33-2019

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

Paul Verchinski
5475 Sleeping Dog Lane
Columbia, MD 21045

I support this bill since it defines who has standing before the Planning Board. This has been a major headache for yours and deprives citizens of their voice on developments that will potentially impact them

Please vote in favor of this bill

Best,
Paul Verchinski

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



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

June 17, 2019

Re: OPPOSITION TO CB33 – Expanding standing to appeal Planning Board decisions

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 33. This bill makes significant changes to standing requirements in the County Code, unnecessarily expanding who can appeal Planning Board decisions far beyond what is settled in Maryland law.

Current Howard County law, which is consistent with established state precedent, requires that a person challenging a Planning Board decision be “specially aggrieved” by the decision, as well as an existing party to the proceedings before the Planning Board. Essentially, Planning Board decisions can only be challenged by people who are actually affected by the decision, and have actively participated in the public planning and approval process. This helps ensure that valuable resources aren’t spent on frivolous challenges, and keeps the process moving as efficiently as possible for the parties involved.

This measure would expand those requirements to include anyone who owns or lives on property that adjoins the project in question; anyone who owns or lives on property within sight, sound, or smell of the project in question; and any civic association, homeowner’s association, or property owner’s association “in the vicinity” of the project in question.

This expansion enables people to join the dispute who have not experienced actual harm; a property owner is not adversely affected simply because they live near a potential project, but this measure would allow them to get involved anyway. Under this new rule, a neighbor who won’t actually experience harm from the project will be allowed to protest it simply because they don’t like it – even though that project has already gone through months, if not years, of analysis, preparation, applications, involvement from experts, approvals from multiple County departments, and finally, approval from the Planning Board. This gives one unhappy but unharmed neighbor the ability to derail a process designed to ensure that any changes made to our neighborhoods are legal and in the best interests of the environment, the County and its citizens.

As a result, members of the public lose the incentive to participate in the public process at an appropriate time. An individual could choose not to attend the numerous meetings and hearings that take place prior to the Planning Board’s ultimate decision, and still file an appeal. If anyone can file an appeal, there is no incentive to spend the time to engage during the planning and approval process. The right to appeal should be reserved for parties of record that have established their opposition through the public approval process.

A property owner should have a right to protect his or her property rights. A person who has been directly harmed by a government decision should have an avenue to address that harm. We already have a system that protects both of these people. Expanding standing to this degree only enables parties who have not actually been harmed, and whose rights are not actually affected, to insert themselves into an already-lengthy process simply on principle. Doing so is inefficient and unnecessary. The MBIA respectfully requests that you vote NO to Council Bill 33-2019.

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



**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 CB33-2019 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.

Bruce A. Harvey
Testimony 06/17/19
Howard County Council
CB33-2019

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 CB33-2019.

Who can appeal Planning Board decisions is often debated. But this CB33 opens the appeal process to a broad spectrum of residents including those that can smell the Property. That certainly seems like a loose definition. Civic Associations claim to represent citizens, but they often act with an agenda for those willing to serve; often unrelated to their own neighborhoods. This bill will lead to a greater number of appeals. Is this to benefit the legal profession or is it really creating a better process for the County? I believe we should focus on better notification of affected residents instead of adjusting the definition of who can file an appeal. For notification purposes, the fact that we still use a small sign that you can barely read as you drive by is a little antiquated. In these early stages is when affected residents need to understand and get involved. Affected residents have a responsibility to get involved and many are guilty of not doing that. With better notification standards, we can help residents better understand what new development is planned.

As a citizen and business owner in Howard County, please do not adjust the "standing" definition for Planning Board decisions and vote NO on CB33-2019.

Thank you for hearing my testimony.



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

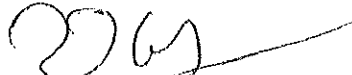
I, Dan O'Leary, have been duly authorized by
(name of individual)

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

County Council regarding CB 33-2019 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.

Testimony on CB33-2019 by Deb Jung 6.17.19

Notebook: 2019 Shabbat Hosts

Created: 6/17/2019 4:38 PM

Updated: 6/17/2019 4:41 PM

Author: Susan Stollman

Testimony on CB33-2019 by Deb Jung 6.17.19

Good evening....my name is Joel Broida and I reside at 5400 Vantage Point Road in Columbia Town Center, a Resident of Columbia since 1970. In am here to testify about CB33-2019 in regard to the concept of "standing".

Having "standing" gives one the right to testify in the form of an "appeal" to an action that has been taken in this case by a County agency or department. The issue being challenged by CB33 is who has and even more to the point who should have that right.

I am here this evening to gain your support for CB33-2019 and to urge you to revise, upgrade, and amend the current definition used heretofore for "standing" as proposed in CB33-2019.

You might ask ^{why} ~~able~~ my interest and more to the point my experience with the old application of "standing" in this very chamber and several ~~other~~ courts in Maryland including the Maryland Court of Special Appeals in Annapolis some twelve years ago.

At that time, I, along with three other Columbia residents, one a next door neighbor and two others living some distances away. Both my condo and that of my neighbor faced an empty lot to be the site of a proposed 22 story condo building. If built, the two buildings would have been less that 100 feet apart. Under the current rules, as interpreted by the developers' attorneys and the County

*Lacked
"standing"*

Office of Law, neither my neighbor or I was granted "standing" to appeal the rulings.

In closing, I want to repeat/read exactly what I just said in the paragraph above to make sure you understand why it is that I firmly believe the current rules for "standing" need to be revised.

In my view, the only way for justice for all to prevail in Howard County some changes need to be made. Right now the developers win and the voting, tax paying neighbor residents loose. That seems unfair to me. What do you think??

Thank you and good night.

Joel Broida
5400 Vantage Point Road
Apartment 413
Columbia, MD 21044



HCCA

Howard County Citizens Association

Since 1961...

The Voice Of The People of Howard County

Date: 17 June 2019

Subject: HCCA Testimony CB33 – The Right to Have Standing

The HCCA Board is very pleased that the issue of “standing” is now being addressed by this bill. We thank councilor Deb Jung for introducing this bill.

Having experienced being told that I don’t have “standing” and that I’m not “sufficiently aggrieved” by attorneys and having this enforced by both the “Hearing Examiner” and the “Howard County Board of Appeals” is extremely frustrating.

Not being able to address the issue at hand is wrong, very wrong! It denies my right to be heard.

On top of this it’s expensive, very expensive! This is a burden on those who seek to be heard on an issue that affects them.

What aggravates the process is when there is a dysfunctional board such as the Howard County Planning Board. In recent testimony against the proposed gas station on the corner of Snowden River Parkway and Minstrel Way over two hours of testimony from both sides was ignored! I gave 14 reasons why this project should not go ahead and documents backing up my opinion only to have the Planning Board make a decision in 20 minutes and completely ignoring my testimony and everyone else’s. I know they ignored my testimony because what I gave them would take at least 45 minutes to review.

On top of this they didn’t follow their own rules of procedure.

So the next step is the Hearing Examiner and the Board of Appeals who go with this very restrictive interpretation of standing.

Their interpretation is so restrictive that even the adjoining property didn’t have standing!

This restrictive interpretation has cost especially small businesses in Columbia hundreds of thousands of dollars in attorney fees. This is a burden that should be eliminated by you passing this Bill.

In carefully reviewing the bill we feel on Page 2 line 3 that says “or any Civic Association” should be removed and be replaced with “located in the same “Final Development Plan”.

Over the past 14 years the restrictive interpretation of standing has been used many times, it's used because attorneys know they do not often have a case so they resort to this tactic!

We urge you to pass this bill with just that one modification.

We want to Thank Councilwoman Jung for having the fortitude to make a wrong a right.

Brian England
HCCA Board of Director



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

I, BRIAN ENGLAND, have been duly authorized by
(name of individual)

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

County Council regarding CB 33 to express the organization's
(bill or resolution number)

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

Printed Name:

BRIAN ENGLAND

Signature:

Date:

JUNE 17TH

Organization:

HCCA

Organization Address:

PO BOX 89

ELLIOTT CITY

Number of Members:

300

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.

Sayers, Margery

From: stukohn@verizon.net
Sent: Friday, May 24, 2019 9:42 PM
To: howard-citizen@yahoogleroups.com; CouncilMail
Subject: A Proposed Bill for a Better Means of Due Process

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

FYI,

Just wanted to share with you another proposed Bill introduced by Councilperson Deb Jung which should be of benefit for all. It is CB33-2019 -- An act amending the Howard County Code by specifying who may appeal Planning Board decisions; see -- <https://apps.howardcountymd.gov/olis/LegislationDetail.aspx?LegislationID=12304>. This is something we have been seeking for a few years thanks to the initiation of HCCA Member, Chris Alleva. Hopefully this Bill will pass as it is definitely in the right direction to establish a better means of due process. We want to **THANK** Councilperson Deb Jung for pursuing this matter.

Stu Kohn
HCCA President