CB50-2021

Sayers, Margery

From: joel hurewitz <joelhurewitz@gmail.com>
Sent: Tuesday, July 6, 2021 10:35 AM
To: CouncilMail
Subject: CB50-2021 - Map Amendments Must be Approved by the County Council
Attachments: CB50-2021 - Map Amendments Must be Approved by the Council.pdf; Exhibit 3 Susan Gray Objection to Barbara Cook 2003.pdf; Exhibit 4 Attorney General Letter Feb 9, 1994.pdf; Exhibit 2 Voter Guides Baltimore Sun and LWV.pdf; Exhibit 1 Petition to Amend the Zoning Map.pdf

Dear Council,

Attached please find my written testimony which discusses in detail my testimony from the legislative public hearing that map amendments must be approved by the County Council.

Exhibits 1-4 are attached. The remaining exhibits can be seen here:
https://www.dropbox.com/sh/0xigmrz1uy3y46q/AAAk1kOcGdwn5LBATpxBcijSa?dl=0

Joel Hurewitz

CB50-2021
Oppose
Testimony of Joel Hurewitz

APPROVAL OF A ZONING MAP AMENDMENT IN THE ERICKSON PETITION BY THE ZONING BOARD IS EITHER AN IRRELEVANT LEGAL BENCHMARK, AN UNLAWFUL DELEGATION OF AUTHORITY FROM THE COUNTY COUNCIL TO THE ZONING BOARD IN VIOLATION OF SECTION 202(G) OF THE HOWARD COUNTY CHARTER, OR CONVERSELY, ACCORDING TO THE ZONING COUNSEL, IS AN EVENT WHICH WILL NEVER OCCUR

There are multi-conflicting positions of whether or not the Erickson at Limestone Valley petition to the Zoning Board involves a "map amendment." By its plain language, CB50-2021 seeks to extend the time for the Zoning Board to **Amend the Zoning Map** for the Erickson Continuing Care Retirement Community (CCRC). This is stated in page 2, line 5 of the bill: ". . . a **Petition to Amend the Zoning Maps** of Howard County to rezone . . ." and also in page 3, line 20-21 for a "**Petition to Amend the Zoning Maps** of Howard County to rezone the Property to CEF-M for the stated purpose of developing a CCRC community. . . " (emphasis added). These provisions reiterate the provisions from CB59-2018 which referenced PlanHoward 2030 eleven times, and stated that "the establishment of a CCRC on the Property in accordance with the Petitioner's stated purpose advances a number of stated land use polices within the General Plan and will satisfy in part a growing and well documented need for continuing care retirement communities within Howard County for people over the age of 62." CB59-2018 p. 1-2. The bill then quoted, for a full page, statements and goals from the General Plan. *Id.* p. 2-3. In Section 2, the legislation was made contingent upon approval of the CEF-M zoning

map amendment within 3 years by the Zoning Board and requires a public water and sewer connection within 10 years. *Id.* p. 4.

Yet, Section 202(g) of the Howard County Charter clearly states that any amendments to the Howard County Zoning Maps other than one under the "change and mistake" principle must be passed by the County Council by original bill. Therefore, either the approval by the Zoning Board is an irrelevant benchmark with no real legal significance or it is an unlawful delegation of powers from the County Council to the Zoning Board. It is ironic that in this regard, County Solicitor Gary Kuc stated during the legislative public hearing the problem of "trumping legislative powers."

That CB50 is seeking to "Amend the Zoning Maps" is further demonstrated by the numerous documents in the record for CB59-2018, CB50-2021, and ZB 1118M created and/or submitted by Erickson through its counsel, Bill Erskine. Exhibit 1. Yet, in the face of all of the evidence that ZB 1118M involves a map amendment, when the Zoning Board discussed these issues Councilman David Yungmann stated that it was "not a map amendment," and it is not "a map change." The participants in the zoning case were then invited to a web event with the Zoning Counsel where she would have a "discussion of floating zones and how they differ from piecemeal rezoning cases." Email from Robin Regner, Board Administrator, Feb. 26, 2021. This statement lacks logic and is contrary to Maryland law because floating zones are a subset of piecemeal rezonings. *Anne Arundel Co. v. Bell*, 442 Md. 539, 113 A.3d 639, 649 (2015) (citing *Mayor and Council of Rockville v. Rylyns Enterprises,* 372 Md. 514, 532, 814 A.2d 469, 483-484

(2002) (floating zones are established by piecemeal grants)). Further demonstrating the incoherent legal positions, the Zoning Counsel stated emphatically that establishing the CEF was not a map amendment and that *Bell* and *Rylyns* did not apply in Howard County. For the Zoning Counsel's positions to be correct, there would be no need for either CB59 or CB50, for the poison-pill deadlines in these bills would never be achieved.

These multi-conflicting positions must be resolved. By the weight of the evidence, the application for the CCRC floating zone in CB59 and CB50 is a map amendment. It is a map change. It is a map amendment. The prior Council said so. The prior County Executive said so. Mr. Erksine says so. If the Council passes, CB50, it too will say that the CEF application is for a map amendment. To conclude that it is a map amendment in CB59, CB50, and the application but not for Section 202(g) of the County Charter is a distinction without a difference. It is wrong. It is unlawful. Howard County needs to stop ignoring its Charter as it has done for more than a quarter century.

SECTION 202(g) OF THE COUNTY CHARTER REQUIRES AMENDMENTS AN AMENDMENT TO THE ZONING MAPS TO BE FINALIZED WITH AN ORIGINAL BILL BY THE COUNTY COUNCIL

Section 202(g) of the Howard County Charter by its plain language creates a binary choice: all zoning actions other than those under the "change and mistake" principle must be passed by the County Council by original bill subject to referendum. In

a case dismissing challenges to violations of Section 202(g) on procedural grounds, the Maryland Court of Appeals summarized the history of Question B:

> In 1994, the people of Howard County successfully petitioned to referendum, and the majority of voters approved at the polls, a charter amendment clarifying that certain acts related to land use taken by the County must be passed by original bill, and therefore are subject to the people's right to referendum. *See* Charter § 202(g) (Editor's note). That amendment was codified at § 202(g) of the Charter, which reads:
>
> > Any amendment, restatement or revision to the Howard County General Plan, the Howard County Zoning Regulations or Howard County Zoning Maps, other than a reclassification map amendment established under the "change and mistake" principle set out by the Maryland Court of Appeals, is declared to be a legislative act and may be passed only by the Howard County Council by original bill in accordance with the legislative procedure set forth in Section 209 of the Howard County Charter. Such an act shall be subject to executive veto and may be petitioned to referendum by the people of the county pursuant to Section 211 of the Charter.

Kendall v. Howard County, 431 Md. 590, 66 A. 3d 684, 687-688 (2013). Rather than conforming its practices to the Charter, the County in *Kendall* mounted a full legal challenge to the plaintiffs' case; the County moved to dismiss the amended complaint. Following a hearing, the Circuit Court granted

> the County's motion on three grounds, ruling that Petitioners failed to: demonstrate particularized harm in connection with the identified County decisions, necessary to establish standing; join all parties who would be affected if the declaratory relief sought were granted; and exhaust administrative remedies.

Id.

While acknowledging the application of Section 202(g) for comprehensive zoning and zoning regulation amendments, Howard County has conspired for two and half decades, to generally ignore any application of Section 202(g) to other zoning actions or

to apply it to floating zones including a CEF. Though, as discussed further *infra* in "Section 202(g) Has Been Discussed By Multiple Charter Review Commissions," amendments regarding floating zones were debated by the Charter Review Commissions particularly in 1995-96 and 2011, no actual charter amendments were proposed to the County Council. Ignoring the plain language and application of Section 202(g) since 1994 has and remains impermissible. The Court of Appeals has stated that "'[a] home rule county charter is a local constitution.'" *Haub v. Montgomery County*, 353 Md. 448, 727 A. 2d 369, 370 (1999) (quoting *Bd. of Election Laws v. Talbot County*, 316 Md. 332, 341, 558 A.2d 724, 728 (1988)). Thus, if any provisions of Subtitle 2 of Title 16 of the Howard County Code or Howard County Zoning Regulations are in conflict with the Charter, they are invalid.

As will be discussed in more detail herein, the Charter must be given effect in accordance with the clear meaning of the words: all zoning matters other than change/ mistake must be done by original bill by the County Council subject to referendum. See *Atkinson v. Anne Arundel County*, 428 Md. 723, 53 A.3d 1184, 1197 (2012) ("[No] words are to be omitted, and effect is to be given to all words in the . . . charter."). This includes establishing floating zones. This was the intent of the framers—those who petitioned the amendment to referendum and the voters of the Howard County who approved the Charter amendment.

Section 202(g) Must Be Interpreted To Effectuate The Intent Of The Voters

The Maryland courts have repeatedly stated the principles involved in statutory interpretation which are also used equally in interpreting a charter. In one case involving the Howard County Board of Appeals, the Court of Appeals found that provisions of the Howard County Charter must be followed:

> A charter or an ordinance generally is read and construed in the same manner as a statute. See *Pickett v. Prince George's County*, 291 Md. 648, 660-61, 436 A.2d 449, 456 (1981); *Clarke v. County Comm'rs for Carroll County*, 270 Md. 343, 349, 311 A.2d 417, 421 (1973); *Prince George's County v. Beard*, 266 Md. 83, 91, 291 A.2d 636, 640 (1972); *Anderson v. Harford County*, 50 Md. App. 48, 51, 435 A.2d 496, 498 (1981); see also 2 E. McQuillin, The Law of Municipal Corporations § 9.22 (3d ed. 1979). Thus, the cardinal rule of construction is to ascertain and effectuate the actual intent of those who either framed and adopted the charter or enacted the ordinance. *Board of Supervisors of Elections of Prince George's County v. Goodsell*, 284 Md. 279, 284, 396 A.2d 1033, 1036 (1979); see *Clarke*, 270 Md. at 349, 311 A.2d at 421. In determining this intent a court must read the language of the charter or ordinance in context and in relation to all of its provisions and additionally must consider its purpose. *Smith v. Edwards,* 292 Md. 60, 70, 437 A.2d 221, 226 (1981); *Department of State Planning v. Mayor of Hagerstown*, 288 Md. 9, 14, 415 A.2d 296, 299 (1980); *Beard*, 266 Md. at 91, 291 A.2d at 640. Where the language of a charter or ordinance is unambiguous, ordinarily there is no need to look elsewhere to ascertain intent. Instead, the language should be given effect in accordance with the clear meaning of the words. *Blum v. Blum*, 295 Md. 135, 140, 453 A.2d 824, 827 (1983); *John McShain, Inc. of Maryland v. State*, 287 Md. 297, 301, 411 A.2d 1048, 1050 (1980); *Clarke*, 270 Md. at 349, 311 A.2d at 421.

Howard Research and Development Corp. v. The Concerned Citizens for the Columbia Concept, 297 Md. 357, 364, 466 A.2d 31 (1983). As the Court previously found in interpreting other provisions of the Howard County Charter in 1983, the language of 202(g) is unambiguous.

Furthermore, the Court has stated additional principles for interpreting a county charter:

> In ascertaining and effectuating the real intention of the drafters of the Charter in the enactment of § 309, we recognize the rule that a plainly worded statute must be construed without forced or subtle interpretations designed to limit its scope. *State v. Intercontinental, Ltd.*, 302 Md. 132, 137, 486 A.2d 174 (1985); *Hornbeck v. Somerset Co. Bd. of Educ.* 295 Md. 597, 619, 458 A.2d 758 (1983). Thus, we may not omit words from a statute to make it express an intention not evidenced in its original form. *In re Ramont K., supra,* 305 Md. at 485, 505 A.2d 507; *Police Comm'r v. Dowling, supra,* 281 Md. at 419, 379 A.2d 1007. On the other hand, while the language of the statute is the primary source for determining the legislative intention, the plain meaning rule is not absolute, as the statute must be construed reasonably with reference to the purpose, aim, or policy of the enacting body. *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 73, 517 A.2d 730 (1986); *Kaczorowski v. City of Baltimore,* 309 Md. 505, 513, 525 A.2d 628 (1987). Thus, we have said that a statute must be construed in context, because the meaning of the "plainest language may be governed by the context in which it appears." *NCR Corp. v. Comptroller,* 313 Md. 118, 125, 544 A.2d 764 (1988). In this regard, words in a statute must be read in a way that advances the legislative policy involved. *Morris v. Prince George's Co.*, 319 Md. 597, 603-04, 573 A.2d 1346 (1990). Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment. *State v. Intercontinental, Ltd., supra,* 302 Md. at 137, 486 A.2d 174; *State v. Fabritz,* 276 Md. 416, 422, 348 A.2d 275 (1975). Moreover, in such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent. *Walker v. Montgomery County,* 244 Md. 98, 102, 223 A.2d 181 (1966); *Truitt v. Board of Public Works,* 243 Md. 375, 394, 221 A.2d 370 (1966).

Baltimore Co. Coalition Against Unfair Taxes v. Baltimore Co., 321 Md. 184, 203-204, 582 A.2d 510 (1990).

The Court of Special Appeals has further elaborated on how to interpret a charter and the sources that may be used to aid in the interpretation:

Judge Levine, writing for the Court of Appeals in *Ritchmount P'ship v. Bd. of Sup'rs of Elections for Anne Arundel Cty.*, explained:

> Article XI-A, s[ection] 1 effectively reserves to the people of this state the right to organize themselves into semi-autonomous political communities for the purpose of instituting self-government within the territorial limits of the several counties. The means by which the inhabitants acquire such autonomy is the charter. Being, in effect, a local constitution, the charter fixes the framework for the organization of the county government. It is the instrument which establishes the agencies of local government and provides for the allocation of power among them.

283 Md. 48, 58 (1978) (internal citations omitted). The Court of Appeals has stated repeatedly, "'a county charter is equivalent to a constitution.'" *Save Our Streets v. Mitchell*, 357 Md. 237, 248 (2000) (citations omitted). We interpret charters "under the same canons of construction that apply to the interpretation of statutes." *O'Connor v. Balt. Cty.*, 382 Md. 102, 113 (2004). Our guiding principle in doing so is to ascertain the drafters' intent in amending the charter. *See id.* at 113-14. "To determine what that intention was, we look first to the language of the amendment." *Mayor & City Council of Ocean City v. Bunting*, 168 Md. App. 134, 141 (2006) (construing amendment to municipal charter authorized under Article XI-E, §§ 3 and 4 of the Maryland Constitution). "If the meaning of the amendment is plain and unambiguous, we need look no further." *Id.*

> When the text invites multiple interpretations, however, we must turn to the various interpretive tools at our disposal to resolve the resulting ambiguity. For instance, we consider the practical result of our decision, seeking to "'avoid constructions that are illogical, unreasonable, or inconsistent with common sense.'" *Id.* at 142 (citation omitted). **We may also look to the greater context surrounding the enactment—its legislative history; other contemporaneous enactments by the drafters; and similar provisions in other counties, the state code, and, if relevant, federal law on the subject—to distill a more complete understanding of the drafters' intent.**

Atkinson v. Anne Arundel County, 236 Md. App. 139, 181 A.3d 834, 845 (2018); hereinafter "*Atkinson (2018)*" (emphasis added).

In *Atkinson (2018),* the Court of Special Appeals presented what is a nonexclusive list of sources used to determine "the greater context surrounding the

enactment." *Id.* This procedure is in accord with that suggested in "Ghosthunting: Searching for Maryland Legislative History," Michael S. Miller, Director of the Thurgood Marshall State Law Library (1998), https://mdcourts.gov/lawlib/research/research-guides/ghost-hunting-md-legislative-history. Miller stated that "the legislative history and construction of [other similar] statutes is often persuasive evidence of the purpose and meaning of [a] law." In addition, "[c]ontemporary newspapers and journal articles may explain legislation or track the history of an important enactment." *Id.*

Thus, these principles will be applied to determine the meaning of Section 202(g). While a plain reading of the provision shows that it is unambiguous, the very fact that Howard County has failed to properly implement it for more than a quarter century for purposes of interpretation, Section 202(g) must be treated as being ambiguous. Therefore, documentation and outside sources will be used to show its meaning to the voters who approved the charter amendment in 1994, its interpretation by the County after passage and subsequently through the years, how other residents and activists have tried to adjudicate the provision year in and year out, and how similar provisions and procedures for rezoning are applied in other Maryland charter counties and the City of Westminster. These sources must be considered because the Court of Appeals has stated that

> [t]he plain meaning rule, however, is not absolute. *Tracey v. Tracey,* 328 Md. 380, 387, 614 A.2d 590 (1992); *Kaczorowski v. Mayor and City Council of Baltimore,* 309 Md. 505, 513, 525 A.2d 628 (1987). "The plain meaning rule is `elastic, rather than cast in stone [,]' and **if `persuasive evidence exists outside the plain text of the statute, we do not turn a blind eye to it.'"** *Hams of Southern Maryland, Inc. v. Nationwide Mutual Ins. Co.,* 148 Md.App. 534, 540,

813 A.2d 325 (2002) (quoting *Adamson v. Corr. Med. Servs. Inc.*, 359 Md. 238, 251, 753 A.2d 501 (2000)).

McKay v. Department of Public Safety, 150 Md. App. 182, 819 A.2d 1088, 1095 (2003) (emphasis added).

The Intent Of Question B Was To Create A Binary Choice For Zoning Actions

Those who drafted and petitioned Question B to referendum of the voters of Howard County in 1994 intended that Section 202(g) create a binary choice of those zoning actions that were change/mistake and all other actions which were not. This is further illustrated by the understanding of the electorate who approved the Charter amendment. The voter guides published by both the Howard County League of Women Voters and in the *Baltimore Sun* also clearly expressed this understanding:

> All except the "piecemeal" zoning cases (subject to the "change or mistake" principle) would be introduced as original bills in the County Council primarily on the recommendation of the County Executive's office. . . . The bills passed would then be subject to executive veto and referendum.

Howard County League of Women Voters, "1994 Voters' Guide General Election" p. 7 and "Voters' Guide 1994," *Baltimore Sun,* October 30, 1994, Exhibit 2. Therefore, the voters who approved Question B are "**presumed to have meant what [they] said and said what [they] meant.**'" *Harford Co, v. Saks Fifth Ave. Dist. Co.,* 399 Md. 73, 923 A.2d 1, 8 (2007) (quoting *Walzer v. Osborne*, 395 Md. 563, 572, 911 A.2d 427, 432 (2006))

(quoting *Witte v. Azarian*, 369 Md. 518, 525, 801 A.2d 160, 165 (2002)) (emphasis added).

The Effect Of Question B Was Immediately Undermined After It Was Approved By The Voters Of Howard County

In the months after passage of Question B, it was recognized that the way to avoid its restrictions was by change/mistake petitions: "That uncertainty carries the potential to wreak havoc with major development projects and could force developers to seek only smaller, piecemeal changes, which are not subject to Question B's provisions." Nelson, Erik, "Defeated candidate claims win, Question B success delights Gray," *Baltimore Sun*, Nov. 10, 1994, 1B, 9B (p. 189, 197), https://www.baltimoresun.com/news/bs-xpm-1994-11-10-1994314033-story.html. Furthermore, "The amendment's authors say all zoning changes except those that correct previous mistakes now must be submitted to the council as legislation." Libit, Howard, "Challenge likely over council vote on zoning rules," *Baltimore Sun*, Feb. 6, 1995 1B (p. 83), https://www.baltimoresun.com/news/bs-xpm-1995-02-06-1995037050-story.html. Thus, beginning shortly after the voters approved Question B, Howard County sought to redefine and narrow its scope: "Accusing the council of 'illegally subverting the voters' decision,' Question B supporters charge that tonight's council bill violates both the wording and the spirit of the newly passed amendment in how broadly it can be applied." *Id.* Question B proponent Susan Gray was quoted in the *Baltimore Sun*: "'Question B was explicitly written to cover any changes to zoning other than a correction that comes under the specific definition set by the

Maryland Court of Appeals. The County Council is trying to exclude them, and that's a big problem.'" *Id.* at 6B.

Almost a decade latter, in March 2003, Gray submitted testimony to the County Council expressing her opposition to the appointment of Barbara Cook as County Solicitor. Therein she alleged the conspiracy by Howard County to ignore the plain requirements of Section 202(g):

> --Mid 1990's to now: Office of Law instructed the Zoning Board to decide all "piecemeal" zoning cases other than "change or mistake" cases, not by bill as required by Question B but administratively, not subject to referendum. The Office also systematically drafted and the council passed ordinances designed to change county processes so that the right of referendum was avoided.
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> --The Office of Law has repeatedly misinformed the council and task forces established to deal with issues including Question B of the legal relationship between the charter and Question B. In particular, it tells people that Question B must be changed in the Charter since the Charter does not conform to the county regulations. This turns law on its head. The Charter is the local Constitution. Council actions must conform to the Charter, not visa versa. Similarly, the Office instructs that Question B is probably illegal under the due process clause of the US Constitution. As stated above, the Supreme Court held in *Eastlake* that allowing the right of referendum over piecemeal, administrative zoning decisions was not a violation of due process as Ms. Cook claims.
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> I could go on almost indefinitely with examples where I believe Ms. Cook has violated Question B, but I think the above should suffice.

Email Testimony of Susan Gray to Howard County Council, March 2003, p. 3., Exhibit 3. Ms. Gray's comments are in accord with the relevant case law discussed herein. The Code, regulations, polices and procedures of Howard County must comply with the

Charter not the other way around. See also the Minority Report of Tom Flynn discussed *infra.*

Additionally, Gray would summarize the actions by Howard County in a complaint in federal court:

> 53. On December 14, 1994, a meeting was held with Defendants Paul Johnson, County Solicitor, Barbara Cook and several citizens who had been instrumental in placing 202(g) on the ballot and securing its adoption by the voters. At the meeting Defendants Johnson and Cook, in order to confuse those in attendance, stated that to fully implement §202(g) would violate the due process rights of individual property owners who requested a zoning map or regulation amendment. This was clearly pre-textual because the Office of Law had an opinion of the Maryland Attorney General's Office expressing in unqualified terms that the Charter provisions §202(g) was constitutional. Moreover, if the Office of Law had felt that this provision was legally infirm, they failed in their duty, clearly established under Maryland Jurisprudence, to request a declaratory judgment from the Maryland Courts prior to placement of the text of the referendum provision on the ballot in November of 1994. This was not done because based on the opinion of the Maryland Attorney General's Office, decision of the Maryland Courts would likely have upheld Section 202(g) as constitutional and in accord with the Supreme Court's decision in *City of Eastlake v. Forrest City Enterprises, Inc.* 426 U.S. 668 (1976).

Kendall, et. al. v. Howard County et. al., Complaint and Demand for Jury Trial, United States District Court for the Northern District of Maryland, Civil No. JFM 09-CV-369, February 17, 2009, http://www.howardcountyissues.org/ComplaintUSDistrictCourt.pdf. Furthermore, it must be noted that the letter opinion cited *Ritchmont Partnership* which was later cited by the *Atkinson (2018)* Court. Maryland Attorney General Advice Letter, to Delegate Martin Madden, from Kathryn M. Rowe, Assistant Attorney General, Feb. 9, 1994, Exhibit 4. Therein, Rowe stated that referring land use actions to the voters of the

county did not constitute "an invalid zoning by plebiscite" and thus Section 202(g) "is not unconstitutional." *Id.* p. 1-2.

Numerous Attempts Have Been Made To Adjudicate The Meaning Of Section 202(g)

There have been many other attempts to adjudicate the meaning of section 202(g).[1] In fact, there were thirteen plaintiffs on the *Kendall* federal complaint. In the Maryland complaint the *Kendall* plaintiffs alleged the following related to Section 202(g):

> In Count I, Petitioners asked the Circuit Court to invalidate 54 resolutions passed by the County Council between 2006 and 2008 and five council bills enacted between 1988 and 1994 (specifying that certain actions be undertaken by resolution). In Count II, Petitioners demanded that the Circuit Court likewise invalidate: § 16.200 *et seq.* of the Howard County Code; five sections of the Howard County Zoning Regulations (§§ 117.1, 117.3, 125, 126, and 127.1); nine individual zoning map amendments approved by the Zoning Board; and a zoning map change made by decision of the Department of Planning and Zoning. Similarly, in Count III, Petitioners sought a declaration that the following are null and void: § 18.101 of the County Code (delegating to the Director the authority to make Metropolitan District inclusion decisions); §§ 18.1205 through 18.1210 of the Howard County Code (permitting shared septic systems); 40 decisions of the Director of Public Works, made between 2006 and 2008, that incorporated specified properties into the Metropolitan District; and an agreement between the County and a developer accepting a particular shared septic system into the County's public sewerage system. And in Count IV, Petitioners mounted the same challenge to approval by County officials of the construction of an interchange and the study of four other interchanges on Route 32 that were not shown on the County's General Plan.

Kendall at 688-689. For almost three decades, with the apparent support from the County Office of Law, no court has made a definitive ruling determining the applicability of

1 Unless stated otherwise, references to other persons raising issues with Section 202(g) in other legal actions is not necessarily intended as an endorsement as to the applicability of the Charter to the particular situation nor to the soundless of any legal positions taken in a particular case; rather the references are only to demonstrate that many other individuals have expressed concerns in numerous actions as to the meaning of Section 202(g) for more than a quarter century since its passage in 1994.

Section 202(g) to zoning amendments. Instead, like *Kendall,* the cases were dismissed on standing, failure to exhaust administrative remedies or other procedural grounds. See for example *Rousseau v. Howard County,* Civil No. JFM-09-1079, United States Dist. Court, D. Maryland, Nov. 19, 2009 (the plaintiffs alleged "that their right to petition zoning changes under Section 202(g) of the Howard County Charter was circumvented when the Howard County Planning Board, instead of the County Council, amended the 'Final Development Plan' ('FDP') for a parcel of land in Columbia, Maryland, to allow the construction of a Wegman's grocery store."); *Rousseau v. Howard County,* 13-C-08-07463-AA (declaratory judgment dismissed for failing to exhaust administrative remedies).

In addition, Frank Martin alleged in Planning Board case PB 368 for Turf Valley "the critical jurisdictional issue regarding Section 202(g) of the Howard County Charter and how the actions of the Planning Board in the PB 368 case were actually legislative activities." Affidavit of Frank Martin, Howard County Circuit Court Case No. 13-C-09-079522, ¶ 3, December 2009, Exhibit 5. Similarly, Susan Gray alleged multiple violations of Sections 202(g) in her affidavit including:

> 2. The thrust of each of these administrative "appeals" was that the approval of this FDP violated Section 202(g) of the Howard County Charter and thus deprived Appellants of their right of referendum and vote.
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> * * *
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> 4. Although the central issue of each of the "appeals" was whether the FDP amendment violated Section 202(g), in each appeal the administrative entities hearing the appeal refused to consider the alleged 202(g) violation.

* * *

13. Case BA 628-D. Plaintiff Rousseau "appealed" subsequent development plan approvals predicated on the approved amended FDP 117-A-1, including the approval in BA 628-D. In each case he claimed that the development plan approved violated his right of referendum and vote established under Section 202(g) of the Charter.

* * *

15. . . . Rousseau repeatedly attempted to raised (sic) the constitutional argument that the development plan approvals violated his right of referendum and vote under Section 202(g) . . .

* * *

18. As noted in the Affidavit of Frank Martin attached hereto, Mr. Martin tried to argue that the approval of the 4th Comprehensive Sketch Plan violated Section 202(g) of the Charter during the proceedings where the plan was approved by the Planning Board, but the Board refused to entertain this argument.

Affidavit of Susan Gray, Howard County Circuit Court Case No. 13-C-09-079522, December 14, 2009, Exhibit 6.

In Howard County Board of Appeals Case BA 735D Science Fiction, Christopher Alleva claimed in part that "the Decision violates article 202.g (sic) of the Howard County Charter by usurping the Power vested in the Howard County Council to amend 'Zoning Regulations.'" Alleva Motion to Reconsider Decision and Order Dated August 22, 2017, p. 25, Exhibit 7. In addition, Mr. Alleva included 202(g) in his opposition testimony before the Howard County Planning Board in Enterprise Homes. Testimony, Christoper Alleva, ZB 1120M Enterprise Community Homes, p. 2, January 3, 2019. Exhibit 8.

Other members of the Howard County community including Lisa Markovitz, community activist and president of the People's Voice, LLC recognizes that the Charter provision is intended to be a binary choice:

> The Howard County Charter (Section 202(g), . . .) states that ONLY the County Council has the authority to grant zoning changes, as they must be done via legislation. The ONE exception listed clearly is in a "change or mistake" case. If a property owner can prove that a mistake was made in prior comprehensive rezoning, then the zone can be granted outside legislation (i.e., via the Zoning Board).

Markovitz, Lisa, "NEW 'CEF' Zoning. What does 'CEF' really mean?" ThePeople'sVoiceLLC.org, June 1, 2015, Exhibit 9. (also available at https://www.peoplesvoicellc.org/single-post/2015/06/01/new-cef-zoning-what-does-cef-really-mean). Later in 2015, Markovitz personally shared her concerns regarding Section 202(g) in a Citizen Meeting with Howard County Department of Planning and Zoning (DPZ) and the Office of Law. Exhibit 10. Furthermore Markovitz has repeatedly publicly expressed her concerns regarding Section 202(g) and its application to CEF ("Community Enhancement Floating") zones by posting on the Howard County Citizens Association Listserv:

> I hope that part of the zoning board procedural updates include fixing a problem with granting CEF zoning. For years, I have been pointing out to the County, including the Office of Law, that the Zoning Board is not allowed to grant this zoning. The Howard County code, Article 202(g), requires the Council to grant zoning map amendments, as legislation, which is subject to referendum. It specifically states that "ONLY" in cases of piecemeal rezonings, with change or mistake rules, can be done by the Zoning Board. There is no interpretation issue there. The Council must grant CEF's, as they are not subject to the change or mistake rule.

Posting of Lisa Markovitz, Howard-Citizen@yahoogroups.com, April 5, 2019. On June 22, 2020, Markovitz again posted:

> The Council needs to be taking on CEF requests to follow the law. Not having the Council, appropriately, decide these cases, makes them more difficult to oppose, as appeal ends up in Circuit Court, and they cannot be subject to referendum. If it is desired for the ZB to retain CEF's, the charter needs amending. I would imagine that any CEF not granted, and appealed, would include this issue, and any granted where opposition wishes to appeal, this would be a serious appeal issue as well. Either way, the Council needs to grant them, or the charter needs amending.

Posting of Lisa Markovitz, Howard-Citizen@yahoogroups.com, June 22, 2020, Exhibit 11. On July 14, 2020, Markovitz shared similar content in a letter to the Howard County Council. Exhibit 12.

Section 202(g) Has Been Discussed By Multiple Charter Review Commissions

Individuals have also repeatedly raised the issues of Section 202(g) at multiple Howard County Charter Review Commissions in 1995-96, 2003-04, and 2011. The County has claimed without any clear support, that Section 202(g) does not apply to floating zones. The Commissions, including specifically in 2011 after debating the topic, decided not to recommend any amendments to change the application of Section 202(g). Thus, the County knew that it applied to floating zones, and in the absence of any changes to Section 202(g), it still applies to floating zones.

On September and October 1995, the Commission discussed amendments to exclude floating zones from Section 202(g). Howard County Charter Review Commission Minutes Sept. 5, 1995, p. 1, Sept. 18, 1995 p. 1, Oct. 30, 1995 p. 2-3,

Exhibit 13. On February 15, 1996 the Commission received public testimony. Gary Prestianni "expressed strong opposition to altering the 'intent of the voters' when §202(g) was adopted in the referendum of the 1994 election." Howard County Charter Review Commission Minutes, Feb. 15, 1996, p. 3-4, Exhibit 14. "[Michael] Custer testified that it is important to keep the existing §202(g)." *Id.* "[Greg] Brown expressed his opposition to the proposed amendments to §202(g)." *Id.* More importantly, in his Minority Report, Commission Member Tom Flynn expressed his strong opposition to amendments to exempt floating zones: "If there is a potential conflict between the Charter and the Howard County Code on the issue of Floating Zones, then the Code should be amended to conform with the Charter, not the other way around." Howard County Charter Commission Minority Report of Tom Flynn, "Regarding Article II, The Legislative Branch, 202(g), Planning and Zoning." Exhibit 15. Furthermore, Flynn addressed the intent of the voters:

> Question B was passed by an overwhelming majority of the voters with the express intent of granting the citizens of Howard County some say, through the power of the Referendum, in the zoning issues that can greatly impact their lives. I do not believe that the will of the people should be subverted by adoption of the proposed amendment.

Id.

In the 2003-04 Charter Review Commission, it appears that there was little discussion of Section 202(g). This is evident in the written testimony of John Taylor:

> Thankfully, no commission member has suggested weakening or deleting Question B 1994, under which the voters established the right to referendum over General Plans and Comprehensive Rezonings. Question B 1994 passed with 67% of the vote, and the commission should continue to respect that.

Letter of John W. Taylor to the Charter Review Commission, Sept. 23, 2003, p. 3, Exhibit 16.

However, in 2011 the Charter Review Commission again considered the issue of floating zones and Section 202(g). In testimony from the public, John Taylor repeated his 2004 opposition to "clarifying that floating zones are not subject to referendum;" and he stated "that floating zones are subject to referendum and were intended to be as part of the language of the Charter amendment placed on the ballot." Howard County Charter Review Commission, Minutes Sept. 14, 2011, Exhibit 17. Furthermore, Question B proponent "Susan Gray testified against changing language regarding zoning legislation that is subject to referendum." *Id.* After discussing Section 202(g) on May 5 (p. 3), June 23 (p. 2), and Oct. 13, 2011 (p. 2) the Commission voted not to propose any amendments to Section 202(g). Howard County Charter Review Commission Minutes, May 5, June 23, and Oct. 13, 2011 and "Howard County Charter Review Commission Table of Discussion Points Currently Under Consideration As of August 25, 2011," Exhibit 18.

The Proposed Carroll Charter Adopted The General Language Of Section 202(g)

As the Court of Special Appeals stated in *Atkinson (2018),* another way to interpret the language of the Charter is to compare the provision with that in other counties. Perhaps the most contemporaneous interpretation of Section 202(g) came with the 1998 proposed Carroll County Charter.[2] When reading the proposed charter,

2 This proposed charter referendum was rejected by the voters for the fourth time in three decades. Hare, Mary Gail and Coram, James M., "Carroll voters reject change Charter government, larger commission lose in special ballot," *Baltimore Sun,* May 3, 1998. In 2020, charter government was still an issue in

similarities with the Howard County Charter in structure and language are readily apparent. This is because Charles Ecker, Howard County Executive shared his thoughts with the Charter Board and language from specific sections of the Howard County Charter were adopted. Carroll County Charter Board Minutes, July 24 and Nov. 20, 1997, Exhibits 19 and 20.

> The equivalent provision to Section 202(g) was Section 202(h):
>
> Planning and zoning. Any amendment, restatement or revision to the Carroll County Master Plan, the Carroll county Zoning Regulations or Carroll County Zoning Maps, other than a reclassification map amendment established under the "change and/or mistake" principle set out by the Maryland Court of Appeals, must be adopted by the Council as law.

Proposed 1998 Carroll County Charter, Section 202(h), Exhibit 21. This provision shows that the Carroll drafters understood the meaning of Section 202(g) and were generally supportive of its goals and scope: to require zoning actions to be performed by the Council by law. In accord with *Atkinson (2018),* using statutes from other jurisdictions is the policy suggested for legislative drafting by the Maryland Department of Legislative Services:

> When using prior introductions, statutes from other states, or other source materials in drafting a bill, consider adapting and improving, rather than simply copying the material. It is likely that the source material, while close to what is needed, will have to be altered and updated. Nonetheless, much time and effort can be saved by refining rather than recreating.

Legislative Drafting Manual 2019, Department of Legislative Services Office of Policy Analysis Annapolis, Maryland, July 2018 p. 28.

Carroll County. Blackwell, Penelope, "Carroll County commissioners vote down motion to create charter writing committee," *Carroll County Times*, Nov. 6, 2020

Maryland Charter Counties

Other than Howard County, ten other Maryland counties are charter home rule governments. Of these, three, as with the proposed Carroll County Charter, adopted their charters after Howard's amendment to 202(g) and thus had it available to reference as a model: Dorchester (2002), Cecil (2012), Frederick (2014). Maryland Association of Counties, County Fact Sheets https://www.mdcounties.org/153/Detailed-County-Information. The other counties with charters are Anne Arundel (1964), Baltimore (1956), Harford (1972), Montgomery (1948), Prince George's (1970), Talbot (1973) and Wicomico (1964); Baltimore City also operates with a charter. *Id.* Those counties that incorporated in their charters a legislative process for rezoning help to illustrate under *Atkinson (2018)* the understanding of Howard's Section 202(g). In addition, most charter counties are legislatively approving zoning actions; thus, there is no impediment for Howard County to not do so as well.

The Frederick County Council Legislative Procedures Are the Model For Implementing Section 202(g)

The Howard County Charter served as a source for the drafting of the Frederick County Charter; Howard County Executive Ken Ulman made a presentation before the Charter Board. Agenda, Sept. 1, 2011, Exhibit 22. Some of the relevant provisions for County Council action include:

> (B) *County Council.*
> (1) The County Council shall hold a public hearing on the application for an **individual zoning map amendment or floating zone reclassification.**

(2) Any person shall have the right to submit oral and/or written testimony at the hearing.
(3) **An application for individual zoning map amendment or floating zone reclassification shall be deemed denied if the County Council has not approved the application within 90 days of the conclusion of the public hearing.**

Frederick County Code § 1-19-3.110.3. REVIEW AND APPROVAL PROCEDURES. (emphasis added). Thus, the Frederick Charter recognizes that zoning map amendments or floating zone reclassifications are treated in the same manner by the County Council. Additionally the Code states:

> The County Council may impose, upon the granting of a zoning map amendment or floating zone reclassification, such additional restrictions, conditions, or limitations as may be deemed appropriate to preserve, enhance, or protect the general character and design of the lands and improvements being zoned or rezoned or of the surrounding or adjacent lands and improvements.

Id. at § 1-19-3.110.5. CONDITIONS.

The Memo from Frederick County's Senior Assistant County Attorney on "Rezoning Hearing Procedures" is applicable to illustrating the procedures that are contemplated by Howard County's Section 202(g) and is very useful in addressing the problem of considering CB50 while the ZB 1118M zoning case is still pending. After holding a quasi-judicial hearing,

> [i]f a majority of the Council Members agree that the criteria have been satisfied and to grant the request, an affirmative vote provides direction to staff to prepare the appropriate documentation for signature. The documentation that results from the Council's decision is categorized as "legislation." If the Council approves the rezoning request, an Ordinance is prepared which operates to change the previously established zoning designation applied to the subject property. If a majority of the Council members are not able to find that the criteria has been satisfied or decide not to approve the request, a resolution is prepared to reflect the non-approval, and the zoning designation remains unchanged. . . .
>
> If the rezoning request is approved, after the Council adopts the

Ordinance, the Ordinance is forwarded to the County Executive for approval or veto.

Memo "Rezoning Hearing Procedures," p. 1-2, Exhibit 23. This procedure is demonstrated by the Council's approval of the Ballenger Run PUD including being compatible with the Comprehensive Plan and meeting the criteria for zoning map amendments. Ordinance No. 18-02-002, March 14, 2018, p. 3-6. Exhibit 24. After the findings of fact, the actual ordinance was approved by the Council and signed by the County Executive. *Id.* p. 7-9. Essentially this same procedure was followed by the City of Westminster discussed *infra.*

The Dorchester County Council Approves Zoning Map Amendments

Likewise, the Dorchester County Council approves zoning map amendments:

A. (b) After the County Council receives the recommendation of the Planning Commission, the County Council shall determine whether or not the proposal is suitable to warrant the introduction of legislation pursuant to Section 303 of the County Charter, and unless the bill is rejected by an affirmative vote of at least four Councilmembers, the County Council shall hold a public hearing in reference thereto in order that parties of interest and citizens shall have an opportunity to be heard. . . .

* * * *

(d) A majority vote of the entire body of the County Council shall be required to pass any amendment to this chapter.

(e) A complete record of the public hearing and the votes of all members of the County Council in deciding all questions relating to the proposed amendment shall be kept.

B. Map amendments.
(1) Findings.

> (a) Where the purpose and effect of the proposed amendment is to change the zoning classification of property, the County Council shall make findings of fact in each specific case, including but not limited to the following matters: the population change, the availability of public facilities, the present and future transportation patterns, the compatibility with existing and proposed development and the compatibility with the county's Comprehensive Plan. The County Council may grant the reclassification based upon a finding that there was a substantial change in the character of the neighborhood where the property is located since the last rezoning of the property or that there was a mistake in the last zoning classification and that a change in the zoning would be more desirable in terms of the objectives of the Comprehensive Plan.

Dorchester County Code § 155-5 Amendments. The excerpts from the minutes of December 15, 2020 and January 19, 2021 show the hearing that was held on the change/ mistake rezoning request for Threesome Auto Salvage. Exhibit 25. Council Bill 2020-12 then approved the rezoning request.[3] Exhibit 26.

The Cecil County Council Approves Change/Mistake Rezonings

The Cecil County Code clearly states that the Council is responsible for rezoning hearings. See Cecil County Code, Chapter A387. County Council Policies and Procedures Article II. Meetings Generally § A387-12. Other meetings. The Council procedures for conducting rezoning cases are in Exhibit 27. A change/mistake rezoning case is shown in the excerpts from the January 5 and 19, 2016 minutes of the County Council. Exhibit 28.

3 Dorchester County does not have a county executive to approve Council bills. https://msa.maryland.gov/msa/mdmanual/01glance/html/county.html

The Wicomico County Council Legislatively Approves Floating Districts And Rezonings

In Wicomico County, the County Council legislatively approves floating districts. The applicable section of the Wicomico County Code is Chapter 225. Zoning, Part 4. Zoning Districts, Article XIII. Special Districts: **Legislatively Approved Floating** Districts: "The following PDDs are therefore set forth in the text of this chapter, with specific boundaries to be established on the Official Zoning Map after approval by the County Council of a preliminary development plan. . . ." § 225-47 Approval. A. "The County Council, upon consideration of the recommendation of the Planning Commission, may approve a floating district . . ." § 225-47 D. "Upon final approval by the County Council, the district boundary shall be shown on the official Zoning Map. § 225-47 E. (emphasis added).

Furthermore, the Wicomico County Code provides that authority for rezonings rests with the Council: "A(3). Legislation. All amendments to the Zoning Chapter shall be considered as legislative acts and processed in accordance with all rules pertaining to such acts." § 225-20 Amendments. At its March 6, 2018 legislative session, the Wicomico County Council held a hearing on a change/mistake case. Because it had been a number of years since the county had had a rezoning, the county attorney explained the rules of piecemeal zoning; the attorney said that they could not find rules so they followed the procedures of other counties that do more rezonings. Wicomico County Council Minutes, March 6, 2018, p. 3, Exhibit 29. Essentially, the county attorney gave an oral description of the Frederick procedures *supra.* After a very short hearing, the

rezoning was approved. *Id.* at 4. The Council then legislatively rezoned the subject property in Bill No. 2018-03: "SECTION 1. BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, IN LEGISLATIVE SESSION. . . " p. 1, Exhibit 30.

The Talbot County Council Approves Zoning Map Amendments By Legislation After A Site Visit

Similarly, in Talbot County, zoning authority is also vested in the County Council[4]:

> 55.1 General procedures.
> A. Types of applications. The County Council is authorized to hear and decide on the following applications, as authorized by this article:
> 1. Amendments to the text of this chapter.
> 2. **Amendments to the Official Zoning Maps.**
> 3. Amendments to the Critical Area Maps, which include amendments to the boundaries of the Critical Area, the Critical Area land management designations (RCA, LDA and IDA), and Modified Buffer Areas. . . .

Chapter 190. Zoning, Subdivision and Land Development, Article VII. Administration, § 190-55. County Council applications (emphasis added).

The relevant provisions of Talbot Council County action include:

> 4. After receiving the recommendations of the Planning Director and Planning Commission, any member of the Council may introduce legislation; if no member of the Council introduces legislation, the application fails.
>
> 5. If any member of the County Council introduces legislation, the public hearing shall be advertised in accordance with the requirements for posting, newspaper publication, and notice to adjacent property owners specified in

4 Talbot County does not have a county executive to approve Council bills. https://msa.maryland.gov/msa/mdmanual/01glance/html/county.html

§ 190-54.5 of this article. . . .

6. **The Council shall not approve or disapprove an amendment to the Official Zoning Maps** until a site visit has been made by a majority of the Council members to inspect the physical features of the property and determine the character of the surrounding area. A site visit shall not be required for sectional or comprehensive amendments to the Official Zoning Maps.

7. **Legislation shall be heard in accordance with County Council legislative procedures.**

Id. at Part D (emphasis added). The requirement of a site visit by the Council shows the very hands-on involvement by the members, and the process is finalized with Council legislation. On November 19, 2019, the Talbot Council passed "a bill to amend the critical area overlay district on the official zoning maps of Talbot County." Bill No 1438, Exhibit 31.

The Harford County Council Performs All Zoning Actions By Written Decision

Perhaps the clearest expression of Council authority of zoning actions in a charter county is Harford County:

> The Council shall enact laws establishing zoning regulations and comprehensive zoning maps, and these laws may be petitioned to referendum in accordance with Section 220 of this Charter. **All decisions of the Council in zoning cases, whether by piecemeal rezoning, special exception, variance, or otherwise shall be rendered by written decisions of the Council**, and these decisions may be appealed to the Circuit Court for Harford County in accordance with Section 709 of this Charter, but may not be petitioned to referendum.

Harford County Charter, Chapter C. Charter Article VII. Planning and Zoning Section 703. Adoption of zoning ordinances and zoning maps. (emphasis added).

ZONING IN SOME MARYLAND JURISDICTIONS (AND IN HOWARD COUNTY) IS A MIXED LEGISLATIVE AND QUASI-JUDICIAL PROCESS

As stated *supra*, Howard County beginning in December 1994 stated that having legislative action on zoning cases would, without any clear authority, violate the due process rights of individual property owners who requested a zoning map amendment by making the amendment subject to referendum. Yet, this was not true in 1994 and is not supported by the many court cases in the intervening decades. The Court of Appeals has recognized the unique procedures for zoning, PUDs, and development plans in a number of Maryland jurisdictions. In Baltimore City the Council approves PUDs by ordinance. However, in Baltimore County, the Council initiates the PUD process by resolution, but the approval is made by an administrative law judge. In addition, there is the complicated process in Prince George's County (and Montgomery County) where the County Council siting as the District Council of the Maryland-Washington Regional District passes zoning ordinances which have elements and conditions which might be found in a D&O in Howard County. See discussion of Zoning Ordinance 10-2004 establishing a Local Activity Zone—a floating zone--quoted in *Prince George's Co. v. Zimmer Dev.*, 444 Md. 490, 120 A. 3d 677, 705-706 (2015).[5]

Thus, considering the wide latitude that the courts have implicitly endorsed for differing processes and procedures for rezoning in the various Maryland jurisdictions, it

5 "**I. THE RELEVANT LAND USE REGIME IN PRINCE GEORGE'S COUNTY: A MIND-NUMBING PRIMER** Most judges and lawyers, and many public officials and members of the general public, are uninitiated (and perhaps even uninterested, unless their oxen are being gored) in the mysteries of land use regulation. With apologies particularly to the uninterested, the following introduction to the relevant zoning, planning, and land use regime in play virtually throughout all of Prince George's County (and the Regional District of which it is a part) is useful, if not essential, in order to grasp the context of the facts of this case and our decision to follow." *Zimmer Dev.* at 683-684.

would not be extraordinary if the Howard County Council were to follow Section 202(g) and finalize the zoning process in Howard County. Moreover, CB59-2018 shows that Howard County does not actually have problems passing land use legislation, which is subject to a referendum, even where that legislation is applicable to only one property. Therefore, any objections to performing zoning actions by original bill which might subject a particular property to plebiscite are specious. Further demonstrating that there is no legal impediment in Maryland law to implementing Section 202(g), is that of the six charter counties discussed *supra,* only the Charter of Harford County specifically excludes a "decision of the Council in a zoning case" from referendum. Harford County Chapter C. Charter, Article II. Legislative Branch, Section 220. Referendum (a)(4).

Approval Of Amendments To The General Development Plans In The City Of Westminster Is A Mixed Quasi-Judicial And Legislative Process

Similar to many of the procedures in the charter counties, especially in Frederick County, the City of Westminster has considered changes to general development plans in a mixed quasi-judicial and legislative process:

> As of 1978, Westminster did not have a Zoning Ordinance. In 1978, the Council approved "[t]he Wakefield Valley/Fenby Farm General Development Plan" for "734.56± acres of land . . . on the western edge of" Westminster, i.e., the Wakefield Valley GDP. The Wakefield Valley GDP consisted of three categories of land use—residential, commercial, and open space —with the "major open space use within the community [to be] a championship golf course."
>
> * * * *
>
> The following year, in 1979, the Council adopted a Zoning Ordinance, now codified as Chapter 164 of the Code of the City of Westminster ("Westminster

Code"). Because a variety of plans were in place before the adoption of the Zoning Ordinance—including the Wakefield Valley GDP—the Zoning Ordinance included a section expressly permitting development to occur based on the existing plans already approved by the Council and providing for amendments to those plans using the process described in an identified provision of the Zoning Ordinance. That section—now codified as Westminster Code § 164-133B—provides, in pertinent part:

> All preliminary plans, final plans, revised preliminary or final plans and all development plans of any type which have been approved by the Mayor and Common Council and/or the Commission prior to November 5, 1979, shall continue to be approved and valid after said date, regardless of the zonal classification of the real property as to which such plans pertain, and said real property shall be developed in accordance with the provisions of such plans. Such plans may be amended in accordance with the procedures provided for the amendment of development plans contained in § 164-188J of this chapter.

WV DIA Westminster v. Mayor & Common Council of Westminster, 462 Md. 369, 200 A.3d 334, 337-338 (2019). The Westminster Code has criteria which must be considered conformity with the General Plan:

> In considering a rezoning application which includes a development plan, the Common Council shall consider whether the application and the development plan fulfill the purposes and requirements set forth in this chapter. In so doing, the Common Council shall make the following specific findings, in addition to any other findings which may be found to be necessary and appropriate to the evaluation of the proposed reclassification:
>
> > (1) That the zone applied for is in substantial compliance with the use and density indicated by the Master Plan or sector plan and that it does not conflict with the general plan, the City's capital improvements program or other applicable City plans and policies.
> > (2) That the proposed development would comply with the purposes, standards and regulations of the zone as set forth in Articles II through XV, would provide for the maximum safety, convenience and amenity of the residents of the development and would be compatible with adjacent development.
> > (3) That the proposed vehicular and pedestrian circulation systems are adequate and efficient.

> (4) That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site.
> (5) That any proposals, including restrictions, agreements or other documents, which show the ownership and method of assuring perpetual maintenance of those areas, if any, that are intended to be used for recreational or other common or other quasi-public purposes, are adequate and sufficient.
> (6) That the submitted development plan is in accord with all pertinent statutory requirements and is or is not approved. Disapproval of a development plan by the Common Council shall result in a denial of the rezoning application of which the development plan is a part.

Id. at 338.

There was a long history of development proposals for the Wakefield Valley GDP. The Common Council held a number of quasi-judicial hearings. At the conclusion of the hearings "because one of the factors was not satisfied, the Council voted to deny the Application, and 'direct[ed] Staff to ... generate an opinion based on [its] deliberations and the considered decisions of the elected officials.'" *Id.* at 346. Subsequently, the Common Council, as with the procedures in the charter counties, adopted an ordinance denying the application and attached the written decision as an exhibit. *Id.* at 347. Exhibit 32.

The Unique Zoning Procedures In Baltimore City

The Court of Appeals has stated that "Baltimore City is governed by a unique procedure and body of law in many respects regarding its zoning procedures." *Overpak v. Baltimore*, 395 Md. 16, 909 A. 2d 235, 241 (2006). The PUD process in Baltimore City begins with a conference between the developer and Planning Commission. After the conference process

> [t]he application is then submitted to the Council in the form of a proposed ordinance (**a bill, in legislative vernacular**) for approval of the development plan. *Id.* § 9-106. 242 Once a bill proposing a PUD has been submitted to the Council, it must be reviewed by the Board of Municipal and Zoning Appeals, the Planning Commission, and any other agencies deemed relevant by the President of the City Council. *Id.* §§ 9- 111, 16-301. These reviewing entities apply a multitude of governing standards that essentially ensure that the proposed PUD will conform with the surrounding area in terms of contemplated development; topography; value of surrounding areas; availability of light, air, open space, and street access; and risks of public and health hazards. *Id.* § 9-112. **If the Council is satisfied with the development plan and reports from the reviewing agencies, it may approve the PUD in the form of an ordinance.** *Id.* § 9-113
>
> Furthermore the *Overpak* Court stated that
>
> [j]ust as Baltimore City has a distinct scheme for PUDs, it so too has one for conditional uses . . . **The Zoning Code provides that the Mayor and City Council may approve a request for a conditional use by ordinance and, additionally, may impose conditions on its approval.** §§ 14-102, 103. Bills that would create conditional uses by ordinance must satisfy the [procedural requirements of the City Code]. The bill is then referred to the Board of Municipal and Zoning Appeals and the Planning Commission and also may be referred to other relevant agencies. *Id.* § 16-301. Following a bill's second reading, it is subject to a public hearing before the committee to which the bill was originally referred . . . *Id.* §§ 16-401, 402.

Id. at 243-244 (emphasis added).

Mixed Legislative And Quasi-Judicial Process For PUDs In Baltimore County

A mixed legislative and quasi-judicial process for PUDs also occurs in Baltimore County. The Court of Appeals has recognized that in Baltimore County the "zoning regulations create a Planned Unit Development ("PUD") approval process that is partly legislative and partly quasi-judicial or adjudicative in nature." *Kenwood Gardens Condo v. Whalen Properties,* 449 Md. 313, 144 A.3d 647, 651 (2016). The Court continued that

> [t]he PUD approval process in Baltimore County begins with the submission of an application to the county councilman for the district in which the proposed PUD is to be located. The application is subsequently incorporated into a County Council Resolution. Substantive review of the application may not proceed unless the County Council passes the resolution. Following the passage of the resolution, the application undergoes an extensive review and approval process by various Baltimore County planning and zoning agencies before concluding in a final public hearing before an administrative law judge ("ALJ").

Id. at 652 (Baltimore County Code citations omitted)..

The Court described in more depth the procedure leading to the adoption of the Council resolution:

> After the council member submits the application [an internal agency review occurs and] the matter of the PUD application is then referred to the full County Council in the form of a Resolution for action.
>
> If the Council concludes that the proposed PUD will achieve a development of substantially higher quality than a conventional development would achieve, and that the proposed site for the PUD is in accordance with the procedures of this title as well as the requirements of the zoning regulations, then the proposed site is "eligible for County review." After the adoption of a resolution, the Council is required to give public notice of the resolution . . .

Id. at 656-657 (Baltimore County Code citations omitted). However,

> [a]pproval by the County Council is not final acceptance of the PUD. Following the passage of the resolution, [there is an informational concept plan conference and agency review], [t]he ALJ reviews the proposed PUD for compliance with the requirements of the Baltimore County Zoning Regulations and issues a written approval or denial of the PUD. Final action on a development plan may not be taken until after a public "quasi-judicial" hearing before an ALJ.

Id. at 657 (Baltimore County Code citations omitted).

Howard County Must Clearly State The Authority For Not Implementing Section 202(g) As Written

For more than a quarter century, Howard County has not fully followed the language of Section 202(g). After the Charter amendment was passed in 1994, the County Solicitor apparently concluded without clear explanation that Section 202(g) did not apply to floating zones. See former Section 103 of the Howard County Zoning Regulations.

The Court of Appeals has also specifically addressed the interpretation of a charter and the limited deference to be given to the interpretation by the Solicitor:

> Such a long-standing construction of Ocean City's Charter powers (at least since the adoption of its present Charter in 1965) by the officials charged with its administration is due considerable deference by the courts when an ambiguity exists as to the proper interpretation of the Charter provisions. See, *e.g.*, *Balto. Gas & Elec. v. Pub. Serv. Comm'n*, 305 Md. 145, 161, 501 A.2d 1307 (1986); *National Asphalt v. Prince Geo's Co.*, 292 Md. 75, 80, 437 A.2d 651 (1981). But no custom, however venerable, can nullify the plain requirements of a statute or charter provision or otherwise confer power on a legislative body. See *Rogan v. B. & O.R.R. Co.*, 188 Md. 44, 58, 52 A.2d 261 (1947); *Hanna v. Bd. of Ed. of Wicomico Co.*, 200 Md. 49, 87 A.2d 846 (1952), *supra*; and *McQuillin*, *supra*, § 10.17. **In other words, the unvarying construction of a charter provision by those charged with its enforcement over a long period of time cannot override the plain meaning of an unambiguous provision or extend it beyond its clear import.** See *Macke Co. v. Comptroller*, 302 Md. 18, 485 A.2d 254 (1984); *Comptroller v. A. Cyanamid Co.*, 240 Md. 491, 214 A.2d 596 (1965). While the City Solicitor's interpretation of the Charter provision is entitled to some weight, he, of course, has no greater power to bind the municipality than a private attorney has to bind a client. See City of Baltimore v. Crane, 277 Md. 198, 352 A.2d 786 (1976).

Inlet Assoc. v. Assateague House Condo., 313 Md. 413, 432-433, 545 A.2d 1296 (1988) (emphasis added). The Court continued "When, as here, it is a patent violation of one of the most fundamental provisions of a municipal charter — that its legislative body, when required to act in a legislative capacity, do so only by ordinance — it cannot matter that a party relies upon erroneous official advice to its detriment." Thus, Section 202(g) cannot be overridden by erroneous interpretation by the county solicitor.

If there is some mystery provision of Maryland law that prevents the Howard County from passing zoning amendments by legislative action, the County Office of Law has failed to clearly state it. It would also come as a surprise to the county attorneys in the other charter counties discussed *supra* whose charters, laws, policies and procedures provide for their councils to act legislatively. If Howard County is correct, then the advice of the county attorneys in particular from Frederick and Wicomico Counties would be incorrect. A ruling that something in Maryland (or federal) law invalidates the language in Section 202(g) would effectively invalidate the provisions in most of the other Maryland charter counties. The advice that would be given by a majority of the county attorneys in the charter counties and the City of Westminster is that a zoning action by a council may be by legislative action. Thus, the weight of the evidence and law is that the other charter counties (and Westminster) are correct and that Howard County is wrong. Therefore, notwithstanding the erroneous interpretations by the Howard County Office of Law, the Howard County Charter requires action by the County Council by original bill for any zoning amendments other than those that are subject to the change/mistake

principle. The facts show that Section 202(g) is not being followed as intended by the voters who approved Question B, and we can no longer turn a blind eye to it.

THE ZONING COUNSEL DID NOT PARTICIPATE IN THE HEARING AS REQUIRED BY THE HOWARD COUNTY CODE

The Howard County Code requires that "**The Zoning Counsel shall appear at all Zoning Board hearings on requests for piecemeal zoning map amendments** for the purposes of producing evidence and testimony supporting comprehensive rezoning and facilitating the compilation of a complete record." Section 16.1000(c) (emphasis added). The grammatical construction of the sentence with the plural use of "purposes" and two uses of "and" shows that the purposes are (1) "producing evidence and testimony supporting comprehensive rezoning" AND (2) "facilitating the compilation of a complete record." However, at a March 3, 2021 Webex meeting with interested members of the public, the Zoning Counsel Eileen Powers stated repeatedly and assuredly that in her 20 years as zoning counsel she only appears in change/mistake cases. Yet, nowhere does the Code make any restriction that the zoning counsel's responsibilities are limited only to "change/mistake" cases; such a limitation is solely based on the understanding that has existed between Ms. Powers and the Howard County Council. In fact, the only reference to "change/mistake" that can be found in the Howard County Code is in Section 16.204(b) pertaining to conflict resolution or mediation at the Mediation and Conflict Resolution Center Inc. of Howard County. There, the grammatical construction of the clause makes clear that "change/mistake" is a hyponym of "piecemeal map amendment":

"other than piecemeal map amendment cases based on the change/mistake rules as established by the Maryland Case Law." Section 16.204(b). As stated in *Harford Co. supra* the language for the zoning counsel should be interpreted as it appears without limiting "piecemeal" to "change/mistake." If the County Council had intended that the zoning counsel only participate in change/mistake cases they would have said so and not "piecemeal," because the County Council "is **presumed to have meant what it said and said what it meant.**'" *Harford Co.,* at 8 *((*quoting *Walzer* at 432 (quoting *Witte* at 165)) (emphasis added).

CONCLUSION

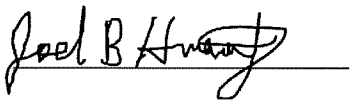
Section 202(g) was intended to present a binary choice on zoning actions which "may only be passed by the Council by original bill." The actions are either under the change/mistake principle as established by the Maryland Court of Appeals or ANY other action. Zoning Board case ZB 1118M is not a change/mistake petition; to the contrary, it is as stated multiple times in CB50-2021 a petition to amend the zoning map.

The law in most charter counties provides that the county council performs all rezoning cases, including change/mistake by legislative act. Nothing in Maryland law prevents these procedures. Thus, Howard County must end its conspiracy to thwart the will of the voters which began in 1994 and instead must follow its Charter and perform all zoning actions other than change/mistake by original bill and, if individuals are so inclined, allow the electorate to take these zoning actions to referendum.

Furthermore, the zoning counsel should have participated in the proceedings amending the Columbia PDP. Piecemeal zoning cases include PUDs, PDPs, GCPs, and floating zones. Thus, the Howard County Zoning Board misreads the County Code by limiting the zoning counsel only to change/mistake cases where nothing in the Code so restricts it, and this conclusion is contrary to the purposed for CB50.

These errors in procedure and application of the Howard County Code and Howard County Charter must be addressed and corrected. This principle was expressed last year by Zoning Board Member Elizabeth Walsh in this case on the issue of holding virtual meetings, but is applicable here as well: "I think we have an obligation to recognize something that was done incorrectly and address it, if that is what is necessary." ZB 1119M, HRVC, June 10, 2020. Therefore, CB50 must be amended to recognize that only the County Council can approve an amendment to the zoning map.

Respectfully submitted,



Joel B. Hurewitz
joelhurewitz@gmail.com
Columbia, MD 21044
July 6, 2021

PETITION TO AMEND THE ZONING MAP OF HOWARD COUNTY

DPZ Office Use Only:
Case No. _____

Date Filed: _____

1. **Zoning Request**

I (we), the undersigned, hereby petition the Zoning Board of Howard County to amend the Zoning Map of Howard County as follows: To rezone the Subject Properties' zoning district classifications from B-2 (Business: General) and RC-DEO (Rural Conservation - Density Exchange Option) to CEF-M (Community Enhancement Floating - Mixed).

2. **Petitioner's Name** Erickson Living Properties II, LLC

Address 701 Maiden Choice Lane, Catonsville, Maryland 21228

Phone No. (W) 410-402-2449 (H) _____

Email Address steven.montgomery@erickson.com

3. **Owner's Name** Please see attached Narrative.

Address _____

Phone No. (W) _____ (H) _____

4. **Counsel for Petitioner** William E. Erskine, Esq. - Offit Kurman, PA

Counsel's Address 8171 Maple Lawn Boulevard, Suite 200, Fulton, Maryland 20759

Counsel's Phone No. 301-575-0363

Email Address werskine@offitkurman.com

5. **Property Identification**

Address of Subject Property Rt. 108, 12170 Clarksville Pike, and p/o 5450 Sheppard Lane, Clarksville, MD 21029

Location of Subject Property Clarksville, Howard County, Maryland

Election District 5th Tax Map # 34, 35 and 28 Block # _____ Parcel # 185, 259, and p/o 100

Lot # _____ Total Acreage of Property 62.116 acres +/-

6. **Petitioner's Interest in Subject Property** Contract Purchaser
(e.g. owner/joint owner/contract purchaser)

7. Reason for the requested amendment to the Zoning Map The Petitioner wishes to establish a Continuing Care Retirement Community (CCRC) on the Subject Properties. Such a use is not currenlty permitted under the existing zoning.

8. Statement as to the present use or uses of the subject property The B-2 zoned parcel is currently used as a Freestate gasoline service station. The RC-DEO zoned parcels are currently used for agricultural purposes; they are not however subject to an agricultural preservation easement.

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NOV - 6 2018
DEPT. OF PUBLIC SERVICE & ZONING

9. Statement as to whether or not there is an allegation of mistake in the current zoning, and, if so, the nature of the mistake and the facts to support the allegation For purposes of this application only, the Petitioner is not alleging a mistake in the current zoning. The proposed CEF-M zoning district is a floating district and therefore a finding of mistake in the current zoning is not a prerequisite for rezoning the Property.

10. Statement as to whether or not there is an allegation of a substantial change in the character of the neighborhood subsequent to the most recent comprehensive rezoning. If change(s) is alleged, the nature of the change(s) and the facts to support the allegation and a statement as to why the petitioner concludes that the reclassification sought is the proper one For purposes of this application only, the Petitioner is not alleging a substantial change in the character of the neighborhood subsequest to the most recent comprehensive zoning. The proposed CEF-M zoning district is a floating district and therefore a finding of substantial change in the character of the neighborhood subsequent to the most recent comprehensive zoning is not a prerequisite for the rezoning of the Property.

11. Statement as to whether or not the petitioner can use the subject property in its present zoning classification and, if not, the reasons why For purposes of this application only, the Petitioner is not alleging that the Property cannot be used in its present zoning classification.

12. Statement as to whether or not such amendment will be in harmony with the General Plan for Howard County and whether such amendment will adversely affect the surrounding and vicinal properties The proposed zoning map amendment will be in harmony with the General Plan for Howard County (PlanHoward 2030) and will not adversely affect the surrounding and vicinal properties. (Please see the Narrative for further discussion on this topic.)

13. State whether or not the subject property is currently served by public water, sewerage, and public roads The Subject Property is located within the Planned Service Area (PSA) for both water and sewer service. It is not, currently physically connected to these public utilities.
The Subject Property is served by public roads; specifically, Maryland Rt. 108 - a minor arterial roadway.

14. Any other factors which the petitioner desires the Board to consider including copies of any written reports intended to be introduced at the hearing and a written summary of verbal evidence of any expert which will be proffered at the hearing Please see the attached Narrative for futher discussion on these topics.

15. **PETITION AND DRAWINGS (PLEASE TAKE NOTE)**

Original Petition plus **24 copies** (if on a county road), with equal amount of required drawings, folded to approximately 8 ½" x 14" **(27 copies if a state road is involved).** Plats of the subject property, plus other such scale drawings as may be required by the Department of Planning and Zoning must show the following:

- [✓] a. Courses and distances of the boundary lines of the subject property and the acreage
- [✓] b. North arrow
- [✓] c. Existing zoning of subject property and adjoining properties
- [✓] d. Location, boundary lines, and area of any proposed reclassification of zoning
- [✓] e. Existing structures, uses, natural features and landscaping on the subject and adjacent properties which may be relevant to the petition
- [✓] f. Location of subject property in relation, by approximate dimension, to the nearest intersection of two public roads
- [✓] g. Ownership of affected roads
- [✓] h. Election district in which subject property is located
- [✓] i. Tax map/zoning map number on which subject property is shown
- [✓] j. Name of local community or neighborhood in which subject property is located or is near
- [✓] k. Name and mailing address of property owner
- [✓] l. Name and mailing address of the petitioner
- [✓] m. Name and mailing address of petitioner's attorney, if any
- [✓] n. Any other information as may be necessary for full and proper consideration of the petition

16. If the petition includes site plan documentation, the petition shall include all information as required by Section 100.0.G.2 of the Zoning Regulations.

17. The Petitioner agrees to furnish such additional plats, plans or other data as may be required by the Zoning Board and/or the Department of Planning and Zoning.

18. The Petitioner further agrees to install and maintain Zoning Hearing Poster(s) as required in the Affidavit of Posting provided by the Department of Planning and Zoning. The Poster(s) must be posted for at least 30 days immediately prior to the Zoning Board hearing and remain posted until 15 days after the final hearing.

19. The Petitioner agrees to insert and pay for the newspaper advertising costs as required by the Zoning Board Rules of Procedure. Said advertisement shall be in a format deemed adequate by the Chairperson of the Zoning Board and must be published once in at least two newspapers of general circulation in Howard County at least 30 days prior to the Zoning Board hearing. The Petitioner also agrees to submit certification of the text and publication dates of the approved advertisement prior to the Zoning Board hearing to the Administrative Assistant to the Zoning Board.

20. The Petitioner certifies that no petition for the same or substantially the same proposal as herein contained for the subject property has been denied in whole or in part by the Zoning Board or has been withdrawn after the taking of evidence at a public hearing of the Zoning Board within twenty-four (24) months of the Zoning Board hearing unless so stated herein

21. The undersigned hereby affirms that all of the statements and information contained in, or filed with this petition, are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

William E. Erskine 11/5/18

Attorney's Signature Date

11-2-18

Petitioner's/Owner's Signature Date

Todd Mattheisen, CFO, Authorized Signatory

Petitioner's/Owner's Signature Date

Petitioner's/Owner's Signature Date

22. **FEES**

The Petitioner agrees to pay all fees as follows:

a. Filing fee including first hearing..... $695.00*
Each additional hearing night..... $510.00*

b. Public Notice Poster(s): $25.00

* The Zoning Board may refund or waive all or part of the filing fee where the petitioner demonstrates to the satisfaction of the Zoning Board that the payment of the fee would work an extraordinary hardship on the petitioner. The Zoning Board may refund part of the filing fee for withdrawn petitions. The Zoning Board shall waive all fees for petitions filed in the performance of governmental duties by an official, board or agency of the Howard County Government.

****

For DPZ office use only:

Hearing Fee $ _____
Poster Fee $ _____
Total $ _____

Receipt No. _____

PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION

County Website: www.howardcountymd.gov

Offit | Kurman®
Attorneys At Law

MARYLAND
PENNSYLVANIA
VIRGINIA
NEW JERSEY
NEW YORK
DELAWARE
WASHINGTON, DC

William E. Erskine
Tel: 301-575-0363
WErskine@offitkurman.com

February 28, 2019

VIA HAND DELIVERY
Howard County Dept. of Planning & Zoning
Attn: Valdis Lazdins, Director
George Howard Building
3430 Court House Drive
Ellicott City, MD 21043

Re: Erickson Living at Limestone Valley; ZB Case No.: 1118-M
Supplement to Petition to Amend Zoning Map of Howard County
Erickson Living Properties II, LLC

Dear Director Lazdins:

On behalf of my client Erickson Living Properties II, LLC (the "Applicant"), I am pleased to submit the attached Supplement to the Petition to Amend the Zoning Map of Howard County as originally filed by my client on November 6, 2018.

As explained in greater detail in the attached submittal, this Supplement is intended to clarify the scope of the Applicant's proposed CEF Enhancements and to reflect certain changes to the DCP which are intended to enhance the design and operational efficiency of the proposed continuing care retirement community ("CCRC").

The revisions to the original Petition to Amend the Zoning Map of Howard County as set forth in this Supplement do not involve new locations or more intensive zoning classifications.

Any aspect of the original Petition and DCP that is not expressly modified by this Supplement shall remain as originally submitted on November 6, 2018.

Thank you for your consideration of the Applicant's Petition as revised by this Supplement.

Sincerely,

William E. Erskine

WEE/lmk
Enclosures

ZB-118M – Erickson Living Properties II, LLC

Table of Contents

Supplement to Petition to Amend the Zoning Map of Howard County

On behalf of the development team of Erickson Living Properties II, LLC (the "Applicant"), the following Supplement to the Petition to Amend the Zoning Map of Howard County as originally filed on November 6, 2018 (the "Supplement") is submitted for the purposes of supplementing and amending certain aspects of the original Petition. Revisions to the Petition narrative are set forth in detail below. Revised sheets of the DCP are attached hereto as **Exhibit "A"** and consist of certain revised sheets dated February 25, 2019 and labeled as follows:

- DCP-9 – Development Standards
- DCP-10 – Site Layout Plan
- DCP-11 – Illustrative Site Plan
- DCP-12 – Environmental Buffer Exhibit
- DCP-13 – Site Sections
- DCP-14 – Architectural Character
- DCP-16 – Conceptual Architectural Elevations
- DCP-19 – Conceptual Architectural Elevations
- DCP-26 – Conceptual Landscape Plan
- DCP-28 – Conceptual Lighting Plan
- DCP-29 – Summary of CEF-M District Enhancements
- DCP-30 – Linear Park Enhancements
- DCP-31 – Multi-Use Pathway Enhancements
- DCP-32 – Multi-Use Pathway Enhancements
- DCP-33 – Multi-Use Pathway Enhancements
- DCP-34 – Multi-Use Pathway Enhancements
- DCP-36 – Multi-Use Pathway Enhancements
- DCP-37 – Multi-Use Pathway Enhancements
- DCP-38 – Multi-Use Pathway Enhancements
- DCP-39 – Multi-Use Pathway Enhancements
- DCP-40 – Multi-Use Pathway Enhancements
- DCP-41 – Multi-Use Pathway Enhancements
- DCP-42 – Multi-Use Pathway Enhancements
- DCP-43 – CEF-M District Enhancements vs Non-CEF Comparison

The above described DCP sheets have been revised for the following purposes:[1]

1.) To update the Development Standards to reflect the permitted use of structured parking.

2.) To update Independent Living Building 3 and the Marketing Center & Sales Building (now referred to as the "Welcome Center") footprint to provide a more efficient building design and internal circulation for residents and prospective residents.

3.) To update limits of the garage below the Care Center and the Independent Buildings #3 and #4 based on refinement of the parking layout through the preliminary design process.

[1] The identified revisions to the DCP are carried through and reflected on all impacted sheets.

4.) To adjust the designation for pathway/sidewalk improvements along east side of MD 108 from Great Star Drive to Linden Linthicum Road to be 5' sidewalk or 8' multi-modal pathway, pending availability of right-of-way or easement per coordination with the County's Corridor Plan and County Staff.

5.) To adjust the designation for multi-modal pathway to read 8' per coordination with County's Corridor Plan and County Staff for the segment from Sheppard Lane to Meadow Vista Way as this area is expected to have light pedestrian activity.

In addition, this Supplement is intended to clarify the scope of the Applicant's proposed CEF Enhancements and to reflect certain changes to the DCP intended to enhance the design and operational efficiency of the proposed continuing care retirement community ("CCRC").

The amendments to the original Petition to Amend the Zoning Map of Howard County as set forth in this Supplement do not involve new locations or more intensive zoning classifications.

Any aspect of the original Petition and DCP that is not expressly modified by this Supplement shall remain as originally submitted.

Enhanced Transportation & Paratransit Services[2]

In addition, to the positive fiscal impacts described above, this proposed Erickson Living CCRC community will convey significant benefits to the County as a result of the robust private transportation services that it offers to its residents and employees. The availability of private transportation services to the residents and employees of the proposed Erickson Living CCRC community will result in a corresponding decrease in the demand for publicly provided transportation services as compared to the expected demand that would be created by a similar sized senior housing complex. Furthermore, Erickson Living communities offer many amenities and services on-campus compared to other senior housing providers including but not limited to several restaurants, fitness centers, pool, hair salon (men and women), library, office, bank, theater room, pharmacy and medical care (full-time geriatric doctors available 24/7 with same day appointments, dentist, podiatrist, ophthalmologist etc.) By reducing the demand for publicly provided paratransit services, this proposed CCRC community on a comparative basis will save Howard County significant expense in the future.

Like all Erickson Living communities, this proposed CCRC community will maintain a fleet of vehicles that will provide private transportation services to its residents and employees, including but not limited to paratransit services. Because of the availability of private paratransit services within the community, it has been the Petitioner's experience that many of our residents and employees will opt to utilize the private Erickson Living paratransit service instead of relying upon the public paratransit services offered by the Regional Transportation Agency of Central Maryland (RTA).

[2] This section supersedes the original section under the same heading beginning on page 4 of the Narrative in Support of Petition to Amend the Zoning Maps of Howard County filed on November 6, 2018.

THE SUN

VOTERS' GUIDE 1994

HOWARD COUNTY CHARTER QUESTIONS

VOTE FOR or AGAINST

Questions A, B and C are amendments to the Howard County Charter. Proposed changes to the Charter must be submitted to the voters for adoption or rejection. Questions A and C result from resolutions adopted by the County Council in 1994. Question B was proposed by a 1994 petition of a sufficient number of Howard County voters' signatures.

QUESTION A: To require appointment be made on the basis of merit.

BALLOT TITLE: To provide that the appointments to permanent positions in the classified system be made on the basis of merit, as provided by law, and to eliminate the requirement that the appointments be made from the highest ten eligibles certified on the basis of examination.

PRESENT PROCEDURE: The Charter currently requires that county classified system (civil service) appointments be made from the ten highest eligibles certified on the basis of examination.

PROPOSED CHANGE: The Charter amendment would require that county classified system (civil service) appointments be made on the basis of merit, as provided by law.

A VOTE FOR MEANS: County classified system appointments will be made on the basis of merit, as provided by law.

A VOTE AGAINST MEANS: The Charter will continue to require that county classified system appointments be made from the ten highest eligibles certified on the basis of examination.

QUESTION B: To provide that certain zoning plans, regulations, and maps be adopted as council bills.

BALLOT TITLE: To provide that any amendment, restatement or revision to the General Plan, the Zoning Regulations, or Zoning Maps, other than a reclassification map amendment established under the "change and mistake" principle set out by the Maryland Court of Appeals, is declared to be a legislative act and may be passed only by the Council by original bill in accordance with the legislative procedure set forth in Section 209 of the Charter. Such an act shall be subject to Executive veto and may be petitioned to referendum by the People of the County pursuant to Section 211 of the Charter.

PRESENT PROCEDURE: As provided by law, the elected County Council adopts the General (Master) Plan by resolution and is required to revise it on a regular basis. The Zoning Board is composed of the County Council members and acts as a quasi-judicial agency on cases involving both "piecemeal" and comprehensive zoning plans, including map amendments and changes to the zoning regulations. There is no limit on the number of public hearings, work sessions or time for deliberation of the Board to permit full public participation in the process. No special interest, business, developer, etc., may contact individual Board members on the topics at issue during that period. All testimony must be matters of public record.

PROPOSED CHANGE: The amendment would add language to the Charter with specific reference to certain county planning and zoning functions. All except the "piecemeal" zoning cases (subject to the "change or mistake" principle) would be introduced as original bills in the County Council primarily on the recommendation of the County Executive's office. The Council would then have up to 65 days — or under certain circumstances no more than 95 days — to pass the bills or they would fail. Citizen participation in hearings would be confined to this period. The bills passed would then be subject to executive veto and referendum.

A VOTE FOR MEANS: The current process would be replaced. Bills passed by the County Council would be subject to executive veto and referendum.

A VOTE AGAINST MEANS: Retaining the present procedure as provided by the Howard County Code.

QUESTION C: To allow cancellation of certain legislative sessions.

BALLOT TITLE: To provide that the County Council will not meet in legislative session in August, except for emergency sessions or sessions called by resolution, and to allow the County Council to cancel by an affirmative vote of two-thirds of its members any regularly scheduled legislative session.

PRESENT PROCEDURE: The Charter requires the Council to meet in August in legislative session unless two-thirds of the Council vote at the previous session to cancel the August session. The Charter is silent on the possibility that the Council might cancel any other regularly scheduled legislative session.

PROPOSED CHANGE: The amendment would provide that the Council not meet in legislative session in August except for emergency sessions or sessions called by resolution. It also provides a mechanism whereby the Council could cancel any other regularly scheduled legislative session by a two-thirds Council vote.

A VOTE FOR MEANS: The Council would no longer meet in legislative session in August except for emergency sessions or sessions called by resolution, and that the Council may cancel any other regularly scheduled legislative session by a two-thirds Council vote.

A VOTE AGAINST MEANS: The present procedure would continue to be required by the Charter.

HOWARD COUNTY

VOTE FOR OR AGAINST

Questions A, B and C are amendments to the Howard County Charter. Proposed changes to the Charter must be submitted to the voters for adoption or rejection. Questions A and C result from resolutions adopted by the County Council in 1994. Question B was proposed by a 1994 petition of a sufficient number of Howard County voters' signatures.

Question A — To require appointments be made on the basis of merit

To provide that the appointments to permanent positions in the classified system be made on the basis of merit, as provided by law, and to eliminate the requirement that the appointments be made from the ten highest eligibles certified on the basis of examination.

Present Procedure: The Charter currently requires that county classified system (civil service) appointments be made from the ten highest eligibles certified on the basis of examination.

Proposed Change: The Charter amendment would require that county classified system (civil service) appointments be made on the basis of merit, as provided by law.

A vote FOR means: County classified system appointments will be made on the basis of merit, as provided by law.

A vote AGAINST means: The Charter will continue to require that county classified system appointments be made from the ten highest eligibles certified on the basis of examination.

Question B — To provide that certain zoning plans, regulations, and maps be adopted as council bills

To provide that any amendment, restatement or revision to the General Plan, the Zoning Regulations, or Zoning Maps, other than a reclassification map amendment established under the "change and mistake" principle set out by the Maryland Court of Appeals, is declared to be a legislative act and may be passed only by the Council by original bill in accordance with the legislative procedure set forth in Section 209 of the Charter. Such an act shall be subject to Executive veto and may be petitioned to referendum by the People of the County pursuant to Section 211 of the Charter.

Present Procedure: As provided by law, the elected County Council adopts the General (Master) Plan by resolution and is required to revise it on a regular basis. The Zoning Board is composed of the County Council members and acts as a quasi-judicial agency on cases involving both "piecemeal" and comprehensive zoning plans, including map amendments and changes to the zoning regulations. There is no limit on the number of public hearings, worksessions or time for deliberation of the Board to permit full public participation in the process. No special interest, business, developer, etc., may contact individual Board members on the topics at issue during that period. All testimony must be matters of public record.

Proposed Change: The amendment would add language to the Charter with specific reference to certain county planning and zoning functions. All except the "piecemeal" zoning cases (subject to the "change or mistake" principle) would be introduced as original bills in the County Council primarily on the recommendation of the County Executive's office. The Council would then have up to 65 days - or under certain circumstances, no more than 95 days - to pass the bills or they would fail. Citizen participation in hearings would be confined to this period. The bills passed would then be subject to executive veto and referendum.

A vote FOR means: The current process would be replaced. Bills passed by the County Council would be subject to executive veto and referendum.

A vote AGAINST means: Retaining the present procedure as provided by the Howard County Code.

Question C — To allow cancellation of certain legislative sessions

To provide that the County Council will not meet in legislative session in August, except for emergency sessions or sessions called by resolution, and to allow the County Council to cancel by an affirmative vote of 2/3 of its members any regularly scheduled legislative session.

Present Procedure: The Charter requires the Council to meet in August in legislative session unless 2/3 of the Council vote at the previous session to cancel the August session. The Charter is silent on the possibility that the Council might cancel any other regularly scheduled legislative session.

Proposed Change: The amendment would provide that the Council not meet in legislative session in August except for emergency sessions or sessions called by resolution. It also provides a mechanism whereby the Council could cancel any other regularly scheduled legislative session by a 2/3 Council vote.

A vote FOR means: The Council would no longer meet in legislative session in August except for emergency sessions or sessions called by resolution, and that the Council may cancel any other regularly scheduled legislative session by a 2/3 Council vote.

A vote AGAINST means: The present procedure would continue to be required by the Charter.

3/3/2003

Dear Council members:

I want to take this opportunity to strongly urge you to not reconfirm Barbara Cook as County Solicitor. As an attorney and planner who has represented individuals and communities in land use matters and as a civic activist for almost 15 years, I believe that this is one of the most important votes you will cast as a council member. My tenure as a civic activist and attorney in land use matters corresponds closely with Ms. Cook's years as county solicitor. During this time I have dealt with Ms. Cook and the Office of Law extensively. I am hard pressed to think of a single instance from the mundane (such as scheduling matters) to the complex (such as the analysis of law) where Ms. Cook and/or the Office of Law has acted with integrity. The Office is dishonest. It does not work for the people of this county, but instead uses all of the resources at its disposal to overwhelm and crush county residents and county employees who have the audacity to demand that the county follow its rules of law. This dishonestly is not limited to county residents and employees but is pervasive in the advice given by the Office to council members in the enactment of legislation, administrative boards in carrying out their functions, and task forces and other groups to which the Office provides advice.

I had hoped to meet with you last week to provide you with detailed materials illustrating the above. However, since that did not happen, I am sending this e-mail. I also left a set of files with Gloria this morning which when read in conjunction with the material outlined below provides examples of the Office of Law's dishonesty. The examples are a hodge poge of things from my files and the files of other attorneys and citizens. The materials are all part of the public record and provide but a glimpse of how the Office of Law under Barbara Cook operates. (Files, documents, and video and audiotapes providing much more extensive evidence of the Office of Law's practices of deception is available. The materials are extensive and in some cases would require transcription. If you wish to see and hear them that can be arranged, but it will take time—time to secure and time to review them.) I realize that your schedules are very busy but I encourage you to review these materials.

I suggest that you review the materials provided to you today in the following order.

1. File 1.: the Clark Ahler Memorandum in the Andrea Quinto case. It is the first document in the Quinto file. In the Memo Mr. Alher describes the Office of Law as being intellectually dishonest and positing and assault on the integrity of the court. (The second document simply summarizes her case.)

2. File 2.: my response to a formal complaint filed against my Bar license by Joe Rutter, apparently on behalf of the county. I note this was filed about three weeks after I found that Joe had surreptitiously changed the language in the draft 2000 General Plan then before the Council for approval to allow almost unlimited expansion of water and sewer lines into the western portion of the county. My affidavit, also included in that file, was one of the things Joe was complaining about to Bar Counsel. The affidavit was filed in a 42 USC civil right action brought by a former county employee. The affidavit by Alice Anne Wetzel, another former county employee, is also in that file. (This action was later dismissed after the county employee ran out of money to pursue it.) The affidavits provide a glimpse of how the Office of Law operates and what it sanctions.

I also note that many of the multitude of pages sent by Rutter to Bar Counsel should only have been available through the Office of Law. I guess that is what happens when one dared to point out DPZ's/Office of Law's misrepresentations: they go after your livelihood! Bar Council's response reminding Rutter that there is such a thing as the 1st Amendment is on the inside cover of the file.

3. The attachment of this e-mail providing examples where Howard County, through DPZ and the Office of Law, has facilitated what was effectively a "taking" of private property for the use of third party developers. (Also see the Groves file). I believe these are 42 UCS 1983 civil rights violations.

4. The materials in the files folder labeled referendum. These materials are just a sampling of what I believe are repeated violations of the right of referendum, particularly Question B, established in the Charter.

SHORT HISTORY OF QUESTION B

---Fall 1988: Bill 66: Council changed subdivision regulations to require that changes to GP be passed resolution. This was in direct contravention to Maryland Court of Appeals case, which had been handed down a month earlier. Inlet Associates v. Asseteague House.

--1988 to passage of Question B, 1994: County took position that subdivision, roads, water and sewer extension, and zoning had to be consistent with General Plan. Developer had to get GP changed to do ay thing other than that on GP. County took position that State Highways could not even study alternative road alignments unless they were on GP.

--See: the 1991 County Solicitor's opinion on GrayRock Drive. It shows that at that time it was the county's position that roads had to be built in accordance with the General Plan. The Council had to change the General Plan by resolution (not subject to referendum) if a developer wanted to build a collector or higher road not on the General Plan.

--1990 GP passed by council by resolution. Language of GP explicitly makes all county plans, such as water and sewer plan part of GP

--1990-1993: County citizens have extensive debate and argue that 1990 GP and comprehensive zoning should be subject to referendum. Citizens collect signatures for referendum on comprehensive zoning. Signatures thrown out by Bd of Elections because zoning is not subject to referendum.

--1993-1995: Citizens sue county arguing that 1990 General Plan and comprehensive zoning had to have been passed by bill, subject to referendum. In arguing Memoranda, Office of Law changes tune. Now argues that GP has no impact, that road decisions are made by DPZ not the Council, etc. Cathell in oral arguments repeatedly stated from bench that citizens were correct and GP and zoning needed to be tossed, Bell stated that overturning county would cause "economic chaos." Court of Special Appeals, in unreported opinion, did not rule on GP issue, but said zoning method was acceptable.

--1993-94: Citizen approach Office of Law for help on doing petition drive to change charter to specifically state that GP and compreh. zoning must be passed by bill. Johnson (Office of Law) states residents have no right to place charter amendments on ballot by petition. Says Maryland Constitution does not apply in Howard County. See affidavits of Peter Oswald.

--1993-94: With help of former county solicitor and administrative judge, and number of attorneys, charter language drafted specifically intended to make the GP and all zoning actions except change or mistake cases subject to referendum.

--While petitions being gathered Office of Law disseminates info sheet to public and press, which misrepresents what proposed amendment, says.

--Throughout petition gathering and up through election DPZ/Office of Law and development community warn of dire consequences of passing amendment.

--November 1994: Amendment passed by 67% of voters.

--December 1994: Office of Law drafts regulations to implement Question B. Regulations effectively gut Question B. Cook acknowledges that she is not implementing Charter amendment. Says she thinks there is a due process problem. This due process issue had been specifically

addressed by the US Supreme Court in the mid 1970's in a case called Eastlake. The court found no problem. Under Maryland law, Cook was required to take the proposed charter amendment to the Court of Appeals prior to the election if she thought there was a problem. She did not do this.

--Mid 1990's to now: Office of Law instructed the Zoning Board to decide all "piecemeal" zoning cases other than "change or mistake"cases, not by bill as required by Question B but administratively, not subject to referendum. The Office also systematically drafted and the council passed ordinances designed to change county processes so that the right of referendum was avoided. The Office of Law and DPZ also just changed practices without any notification of the council. Examples: Ordinance allowed metropolitan inclusion to be done administratively, instead of by bill. Projects and properties were bought into the public sewerage system by developer agreement, instead of by bill. Office of Law changed the language in agricultural preservation easements without notifying the council to make them less restrictive and permanent; DPZ instituted its own road guidelines, which replaced the council approved road regulations; DPZ implemented its own stormwater management guidelines, which replaced the council's regulations. The Office of Law refused to implement the specific language of the 1990 GP which specifically said that it encompassed all Master Plans into the General Plan and continued to pass such documents such as the Master Plan for Water and Sewer and the county Parks Plan by resolution. By undertaking these actions the Office of Law has shifted almost the entire legislative decision apparatus to the executive branch and away from the council.

--The Office of Law has repeatedly misinformed the council and task forces established to deal with issues including Question B of the legal relationship between the charter and Question B. In particular, it tells people that Question B must be changed in the Charter since the Charter does not conform to the county regulations. This turns law on its head. The Charter is the local Constitution. Council actions must conform to the Charter, not visa versa. Similarly, the Office instructs that Question B is probably illegal under the due process clause of the US Constitution. As stated above, the Supreme Court held in Eastlake that allowing the right of referendum over piecemeal, administrative zoning decisions was not a violation of due process as Ms Cook claims. Also, the Supreme Court in Meyers v. Grant established that the right to exercise referendum power given to a people through a charter or other governing statute is a fundamental 1st Amendment right

I could go on almost indefinitely with examples where I believe Ms. Cook has violated Question B, but I think the above should suffice.

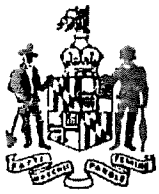
To summarize, it has been my experience with the Office of Law over the past 14 years that it is the practice of that Office to 1) facilitate the non-implementation of county ordinance; 2) circumvent the Council through the implementation of new county policy and practices through administration fiat; 3) misrepresent law, the status and nature of projects, policies, practices, personnel matters, etc., to the public, the Council, the courts, and any one else necessary to carry out their agenda; 4) violate the People's right of referendum; 5) effectively "take" private property for developers, and 6) engage in what ever deceit and deception necessary to carry out their goals. Now is the time to put a stop to these practices.

I hope this e-mail and the materials provided have given you the needed glimpse of the egregious nature of the Office of Law's activities so you understand the importance of not reconfirming Barbara Cook as county solicitor. I would be glad to talk with you further regarding this matter.

Susan Gray

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

RALPH S. TYLER
DEPUTY ATTORNEY GENERAL



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February 9, 1994

The Honorable Martin G. Madden
219 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Madden:

You have requested advice on a proposed amendment to the Howard County Charter that would deem certain zoning actions to be "legislation" subject to executive veto and to referendum. In my view, this amendment would not be unconstitutional.

Zoning is a power reserved to charter home rule counties by the Express Powers Act, Art. 25A, §5(X). As such, counties that draw their zoning powers from the Express Powers Act have significant control over their zoning procedures.

In Ritchmont Partnership v. Board, 283 Md. 48 (1978), a case involving a referendum on a county zoning matter, it was held that a county charter could provide for referendum of local ordinances as part of the constitutional power to establish and organize local government. This power would also include the power to determine that zoning actions shall be enacted as "legislation". 1/ Finally, Steuart Petroleum Co. v. Board, 276 Md. 435 (1975), rejected the contention that referring a land use decision to the voters of the county constituted an invalid zoning by plebiscite.

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1 Zoning is a legislative function. Reese v. Mandel, 224 Md. 121 (1961).

For all of the above reasons, it is my view that the proposed charter amendment is not unconstitutional.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR:maa

IN THE CIRCUIT COURT
FOR HOWARD COUNTY MARYLAND

PAUL F. KENDALL, *Pro se* 2630 Turf Valley Road Ellicott City, Maryland 21042 (Howard County)	)	
	)	Case No: 13-C-09-079522
OC FRANK MARTIN, *Pro se* 2911 Beaver Lake Court Ellicott, City, Maryland 21042 (Howard County)	)	JURY TRIAL DEMANDED
PHILLIP ROUSSEAU 9250 Silver Sod Columbia, Maryland 21045 (Howard County)	)	
C. EDWARD WALTER 1920 Woodstock Road Woodstock, Maryland 21163 (Howard County)	)	
Plaintiffs	)	
v.	)	
HOWARD COUNTY, MARYLAND, 3430 Courthouse Drive Ellicott City, Maryland 21043 (Howard County)	)	
Defendant	)	

Affidavit

Frank Martin, a party to this action, upon oath or affirmation states as follows:

1. I am an adult over the age of 18 years, a party to this action and competent to declare to the matters contained herein.

2. I was present and a party to PB 368, the hearing before the Howard County Planning Board reviewing a request by the Mangione Family Enterprises, Inc.'s for approval of the 4th Amended Comprehensive Sketch Plan. This presentation was a review of the project and application of each of the criteria to the project. It reviewed historical points to show how various factors had never been addressed and continued to remain unaddressed in the current plan.

3. My presentation set forth the critical jurisdictional issue regarding Section 202(g) of the Howard County Charter and how the actions of the Planning Board in the PB 368 case were actually legislative activities.

4. On January 5, 2006, I was prepared to give this presentation.

5. On each of the six criteria, my presentation contained a detailed explication of the criterion and a review of what the 4th CSP provided. In order to emphasize each point, I presented historical plans of the Turf Valley development to show that the developer has never shown what was to be built there.

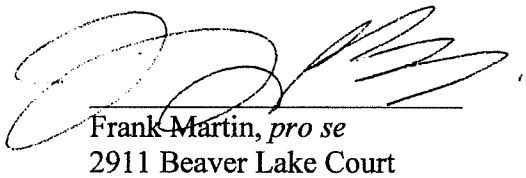
6. Almost every slide I presented was objected to and the objections that were all sustained because each slide was considered as containing information outside the 6 criteria. For example, on T. 358, as soon as I began my presentation, Mr. Talkin offered a preliminary objection that nothing could be offered outside the criteria. That objection was sustained.

7. I was also denied the ability to present evidence on the consistency with the general plan. On T. 359 Slide 5 of the presentation was objected to by Mr. Talkin and

sustained. In several instances, Mr. Talkin objected that what I was presenting was historical and did not apply to the 4th Amended CSP.

8. The Planning Board allowed both Appellees under Mr. Talkin's guidance to present evidence regarding previous CSP's, comprehensive zoning processes and other historical events surrounding the Turf Valley project.

I solemnly swear upon penalties of perjury and with personal knowledge that the foregoing is true and correct to the best of my knowledge and belief.



Frank Martin, *pro se*
2911 Beaver Lake Court
Ellicott City, MD 21042
(410) 750-1555

IN THE CIRCUIT COURT
FOR HOWARD COUNTY MARYLAND

PAUL F. KENDALL, *Pro se* 2630 Turf Valley Road Ellicott City, Maryland 21042 (Howard County)	)	
	)	Case No: 13-C-09-079522
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Plaintiffs	)	
v.	)	
HOWARD COUNTY, MARYLAND, 3430 Courthouse Drive Ellicott City, Maryland 21043 (Howard County)	)	
Defendant	)	

AFFIDAVIT OF SUSAN B. GRAY

I, Susan B. Gray, am 18 years of age or older and am competent to testify to the facts set forth herein. I do depose that:

Wegmans

1. Between January of 2008 and January of 2009, I represented Plaintiff Rousseau, in this matter, and several other gentlemen in a series of administrative "appeals" contesting the Planning Board approval of Final Development Plan FDP 117-A-I—a change in a Final Development Plan in Columbia, necessary for a Wegmans store to be built, and in administrative "appeals" of other development plans predicated on this FDP approval.

2. The thrust of each of these administrative "appeals" was that the approval of this FDP violated Section 202(g) of the Howard County Charter and thus deprived Appellants of their right of referendum and vote.

3. FDP amendment 117-A-I is one of the alleged Charter violations in this Complaint.

4. Although the central issue in each of these "appeals" was whether the FDP amendment violated Section 202(g), in each appeal the administrative entities hearing the appeal refused to consider the alleged 202(g) violation.

5. Illustrative of this refusal are the following:

6. Case BA 620-D. In the appeal of the Planning Board decision approving the FDP amendment, the Appellant was Howard County resident Carvel Mays, a gentleman who clearly has no standing based on the proximity of his home to the Wegmans site.

7. The Howard County Code provides for a right of appeal of a Planning Board decision to the Hearing Examiner and Board of Appeals for persons who are "aggrieved" by the Planning Board's decision. Under Maryland law, the term "aggrieved" has been defined to mean that the individual allegedly "aggrieved" is experiencing harm from the challenged decision in a manner different from that of the general public.

8. Mays argued that he had standing to appeal the Planning Board decision approving FDP 117-A-II because such action violated his charter established right under Section 202(g) to take such zoning changes to referendum and vote. This right, he argued, was personal to him and thus made him aggrieved by the Board's approval decision.

9. The Hearing Examiner dismissed Mays' case before review on the merits finding he had no standing to appeal the Planning Board decision. The Board of Appeals also dismissed his case for the same reason.

10. Mays noted an appeal of the Board of Appeals decision denying him standing to the Circuit Court for Howard in the fall of 2008. The appeal was brought under

the Maryland Rules for judicial review of the "record" made before the Board of Appeals.

11. Upon a Motion to Dismiss filed by Wegmans' attorneys Richard Talkin and Sang Oh before the agency "record" had been transmitted to the Circuit Court and months before Memoranda of Law required by the Maryland Rules were due, Judge Timothy McCrone of the Howard County Circuit Court in January 2009 ignored the required appellate review process and dismissed Mays' case providing no opportunity for judicial review of the Board of Appeals' decision and the process afforded Mays as to that decision.

12. Judge McCrone's decision denied Mays his right of appeal.

13. Case BA 628-D. Plaintiff Rousseau "appealed" subsequent development plan approvals predicated on the approved amended FDP 117-A-I, including the approval in BA 628-D. In each case he claimed that the development plan approved violated his right of referendum and vote established under Section 202(g) of the Charter.

14. Rousseau's standing to appeal was not challenged presumably because of the proximity of his house to the site and particularly to the street carrying traffic to the site.

15. As the attached documents indicate, Rousseau repeatedly attempted to raised the constitutional argument that the development plan approvals violated his right of referendum and vote under Section 202(g) and noted that under *Insurance Commissioner v. Equitable Life Insurance*, 339 Md. 596, 621, 644 A.2d 862 (1992) the reviewing bodies were required to hear such a challenge. As the documents indicate, the reviewing administrative bodies simply refused to entertain this argument.

Turf Valley

16. I represent Frank Martin, also a Plaintiff in this case, in the judicial review of the approval of the 4th Comprehensive Sketch Plan for Turf Valley. This case currently is before this Court.

17. The Court held oral arguments on the merits of this matter last Thursday, December 10, 2009.

18. As noted in the Affidavit of Frank Martin attached hereto, Mr. Martin tried to argue that the approval of the 4th Comprehensive Sketch Plan violated Section 202(g) of the Charter during the proceedings where the plan was approved by the Planning Board, but the Board refused to entertain this argument.

19. Despite the fact that the administrative agency making the decision refused to consider this argument, this Court on Thursday ruled that this approval did not

violate 202(g), such decision thus circumventing any administrative review of Martin's 202(g) challenge.

I do solemnly affirm upon penalties of perjury and with personal knowledge that the aforementioned is true to the best of my knowledge, information and belief.

Susan B. Gray

12/14/16

Date

September 1, 2017

The Honorable, Michele Lefaivre
Hearing Examiner
Howard County, Maryland
3430 Courthouse Dr.
Ellicott City, MD 21043

Subject: **BA 735 D Science Fiction LLC, Protestant Christopher Alleva**

Motion to Reconsider Decision and Order August 22, 2017

The undersigned, a Protestant in case BA 735 D hereby submits this motion to reconsider under article 11.2 of the Howard County Hearing Examiner Rules of Procedure hereinafter referred to as the "HEROP". **This Motion to Reconsider** requests a hearing and a suspension of the Decision and Order. This motion enumerates eight (8) reasons for you to reconsider your decision. These reasons include a litany of irregularities, omissions, mistakes, errors, misapplication of the law and an allegation that the decision violates the Howard County Charter.

Decision and Order Holding

In the order, the Hearing Examiner held that she is bound to follow previous approvals regarding new FDP uses and supports the holding by concluding that new uses may be added by the Planning Board and tailored to a specific site if they are compatible.

The essential decision is recited on page 10 of 39 of the D&O, to quote:

> *"In the Hearing Examiner's view, for the limited purposes of this application DPZ's opinion of the SIC FDP 117, Sec. 1 Area 1 7D text criteria as a commensurate benchmark for consideration of the FDP amendment application is reasonable. With de -minimus exception the SIC Sec. 1, Area1, FDP 117, 7D text criteria, remains consistent, as reported by DPZ staff. The Hearing Examiner reasonably concludes, on balance the proposed Liquor Store land on the same property as a full service grocery store, as a supportive "related use" to a permitted use is compatible with SIC industrial land uses."*

Basis for Reconsideration

There is no provision in the HCZRs to evaluate an amendment to an FDP using the recorded FDP text criteria as a "commensurate benchmark" yet you suggest this is reasonable. What is a "commensurate benchmark?" I have no idea, but I do know it means nothing with regard to the administration and enforcement of the Howard County Zoning Regulations. Next you say: "With de minimis exception the SIC Sec. 1, Area1, FDP 117, 7D text criteria, remains consistent, as reported by DPZ staff." What is a de minimis exception? What is the de minimis exception to the text on FDP 117? Consistent with what? Based on these premises you then conclude that *"on balance the proposed Liquor Store land on the same property as a full service grocery store, as a supportive "related use" to a permitted use is compatible with SIC industrial land uses."* Supportive of what? Related to what? These terms are nowhere to be found the HCZRs?

This is circular reasoning. How can something be consistent with itself? And how can you limit this to one lot? And adding a retail grocery store to one 12 acre lot in a 181+- acre Industrial FDP is consistent? Since the Comprehensive Sketch Plans were destroyed. DPZ represented in their Technical Staff report "*that the text criteria approved by the Planning Board in 1972 on the original FDP for this phase is the same as that approved by the Planning Board previous to that as part of the Comprehensive Sketch Plan. Therefore the text criteria for FDP 117 can serve as the "guide" for the Planning Board pursuant to Section 125.0.D.2. below [sic] Planning Board approves criteria with the Final Development Plan."*

Now, let's unpack this premise. First, as you stated, neither the Director nor the Hearing Examiner has the authority to substitute, waive or otherwise alter the Zoning Regulations as this would violate Article 202.g of the Howard County Charter. The Director's filing of ZRA 177 on February 6, 2017 which

undertook to amend the very same section 125.D.2 and *Section 103 Definitions, Final Development Plan* providing that recorded FDPs supersede the CSPs is compelling evidence that the Director believes he lacks the authority to substitute this one regulation for another, as you have in fact done here. And qualifying this extra-regulatory action by implying it is "reasonable, de minimis, supportive, related and on balance" does not rescue this Decision. Your attempt to dress this up with words that would appear to be legalistic to the unwary, only makes your errors more egregious.

Moreover, Section 125.D.2 only applies to FDP amendments under 125.D.8, more about which in due course. It should also be noted that there are critical provisions that pertain to substantive due process under Section 125.C *Comprehensive Sketch Plans* that are in effect violated by substituting the FDP provisions as a "guide." Guide is not a standard for anything in the HCZRs. This is binary, the amendment either complies with the regulations or it does not.

Topping this off, *Section 101.O Rules of Construction*, of the HCZRs dictate:
"O. All uses are prohibited unless specifically enumerated as a use permitted as a matter of right or as an accessory use in the various districts as provided by these regulations."

In your "Final Note," you say that "*neither the Planning Board nor the Hearing Examiner may write Zoning Policy through their decision-making Our narrow assignment under state and local law is to apply zoning law to specific requests. Only the county legislature writes zoning policy."*

The last thing in the world I want to do is criticize anyone gratuitously, but surely you recognize the evident conflict in the reasoning here. On the one hand, your Decision relies on a reading of the regulations that necessitates a construction that is not contained in the four corners of the HCZRs. On the other hand, you close the D&O with an admonition that you don't have the authority to do the very thing you're doing.

HEROP Rule 10.5 "authorizes the examiner to grant or deny the petition, grant the petition with modifications or conditions, or, in the case of an administrative appeal, remand the case to the agency for further proceedings." It is questionable, if the Hearing Examiner is empowered to make modifications to an Administrative Appeal. Under Section 101 H. of the HCZRs Rules of Construction, *"Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination,"* the two clauses are not dependent. Based on the Rules of Construction, it appears that the power to modify or impose conditions applies to matters other than administrative appeals, such as variances, and conditional use grants. This reading is reflected in Section 130, Hearing Authority of the HCZRs that codifies these powers more particularly than 10.5 in the HEROP. Section 130.2.c, Variances, Conditions or Restrictions: "The Hearing Authority may attach conditions or restrictions to a variance as it deems necessary in the specific case." The purpose of the power to modify these petitions is to minimize the adverse effects of the variance upon other property in the neighborhood. For Conditional Use cases, the Hearing Examiner's power to modify is spelled out in Section 131, again to minimize adverse affects on others. Whether the Hearing Examiner has the power to modify Administrative Appeals or not, it is indisputable that the power to modify does not extend to modifying, altering or waiving any provision of the HCZRs as you have done here.

This follows logically from the very different nature of an Administrative Appeal from the other types of cases you hear. In Conditional Use Cases and variance petitions, the Hearing Examiner sits as the Hearing Authority. When the Hearing Examiner convenes an Administrative Appeal, the Hearing Examiner sits as an Appellant body. This is a completely different set of authorities with different burdens and different implications. In an Administrative Appeal the Hearing Examiner sits in judgement of Executive Agency's actions, where the Hearing Examiner is tasked with judging if the Agency erred. Appellants of these Decisions are charged with proving the error by substantial evidence.
In this case you took it upon yourself to amend the HCZRs and ignore the burden of proof in your Appellant Capacity.

Specific of Reasons for Reconsideration

This Decision is unsupported by the facts and the law. In the history of the NT floating Zone in the Howard County Zoning Regulations ("HCZRs") the only previous time uses were added to an FDP was for the very same FDP 117-A-II. There is no provision in HCZRs to add a use to an FDP in this fashion. Counsel to the Planning Board conceded this and you concurred. There is nothing in HCZRs or any precedent or policies to support the Decision. Instead the Hearing Examiner applied a nonexistent standard of "compatibility" under the guise of a regulatory fiction of "commensurate benchmark," and alluded to phantom precedents that are not supported by the facts in evidence or the law.

1. Material misstatement of fact that the Decision rests upon.
2. Material inconsistencies between the evidence and testimony of the Appellant and the description in the D&O that the Decision is based on.
3. Erroneous conclusions adduced from testimony and evidence of interested party, Christopher Alleva

4. Improper Exclusion of Evidence that is relevant, reliable and material, including the FDP amendment, 117-A-II that is the very basis of your Decision.
5. Spoliation of Evidence and adverse inference.
6. Misapplication of the Burden of Proof.
7. Hearing Examiner added evidence to the closed record depriving parties from responding, cited FDP amendments that are not relevant, not applicable, and excluded from consideration the Wegman's, FDP amendment, and made a Decision despite the absence of provisions in the HCZRs for redevelopment in the NT zone outside the Villages and Downtown as admitted by the OOL with concurrence by you.
8. Decision Violates the Howard County Charter.
9. Conclusion

In the discussion that follows I will set forth the basis for this reconsideration, including supplementary documentation in support thereof.

1. **Material misstatement of fact that the Decision rests upon.**

The subject D&O and the Preliminary Order are largely based on two (2) hand written notes on the face of the Planning Board Decision Letter. I questioned Department of Planning and Zoning staff, Jill Farrar regarding the origin of these notes. These cryptic and indecipherable notes, "New Town uses" and "General Plan" were in fact affixed by Ms. Farrar.

Your Preliminary order and the D&O relied heavily on these notes from a staffer with no authority. Arguably, your Decision relied solely on baseless inferences you drew from the notes that are cryptic at best and misleading at worst. Even if a Planning Board member made these notes, it was improper for you to impute an interpretation on these words that was unsupported by the evidence in the record.

Attached as **exhibit A**, is a copy of my email correspondence with Ms. Farrar in which she admits to writing the notes. Presumably, the Planning Board Executive Secretary was aware of this irregularity. Since your decision was so heavily based on these notes, I felt duty bound to call this to your attention. This irregularity alone merits a reconsideration.

2. **Material inconsistencies between the evidence and testimony of the Appellant and the description in the D&O.**

   In addition to the misleading notes discussed above, the D&O and Preliminary Order cite "other evidence" and testimony in support of the conclusion that the Planning Board acted arbitrarily or contrary to law.

   The Appellant called two witnesses, based on a review of the recording and my recollection, neither witness testified about the conduct of the Planning Board in the instant case or offered any evidence whatsoever. The other interested parties certainly didn't offer any testimony to this effect. Furthermore, there was no testimony from any witness that the Planning Board based their decision on economic competition, yet the D&O cites this as a basis for the Decision. As a result, there are material inconsistencies between testimony given in the hearing and your descriptions (or lack thereof) in the D&O. Notably, the only reference to specific testimony you included in the D&O was my testimony.

3. **Erroneous conclusions adduced from testimony and evidence of interested party, Christopher Alleva**

My testimony was severely compromised because you held me to a strict standard of evidence and upheld numerous objections by the appellant to exclude key evidence and testimony. First, I never testified to a "comparative" land use standard that you characterize as an "impermissible extra-legislative subjective standard." You make a further erroneous conclusion that the FDP is the "sole and controlling "zoning regulation"" which is simply untrue. Had you not excluded relevant evidence and testimony, you would have had the benefit of my complete analysis.

The Planning Board continued the case from the initial August 4, 2016 meeting. At which time, the Planning Board's requested DPZ to research the question:

Have Final Development Plans ever been amended in this fashion before?

Or put another way: Has the Planning Board ever added a retail use under the "ancillary or compatible" catch all to an "Employment Center Industrial FDP?

Inexplicably, the Director answered a different question. He answered the question, how many liquor stores are in close proximity to grocery stores? The Director requested Mr. Meachum to survey the location of all liquor stores in Howard County, his survey showed that there are 17 liquor stores near grocery stores. (there are actually 19 near grocery stores and 25 in shopping centers). In my view, the survey and explanation did not address the Planning Board's question. Having liquor stores in shopping centers is a longstanding policy in Howard County and has been stated in the General Plans going back to at least 1990, 2000 and Plan 2030. Showing that liquor stores are near grocery is not germane to this case. This is a zoning case. Specifically, this is a zoning case concerning the authority of the Planning Board under the HCZRs to add uses to Final Development Plans under Section 125- NT of the 2014

HCZRs.

Mr. Santos, (Planning Board Chair at the time) referenced the Owen Brown Village Center which is on FDP 150 and permits uses in B-1, B-2 and S/C zoning districts. This FDP zones 14.165 acres "Employment center commercial." It is apparent that this situation is completely different than Wegman's. A liquor store is permitted anywhere on the site. In the B-1, B-2, and S/C commercial zones liquor stores are a permitted use. The Wegmans' FDP includes a referenced zoning district, M-1 Industrial where liquor stores are never a permitted use. The Comprehensive Sketch Plan and the Preliminary Development Plan also designate this area as "Employment Center Industrial." Let me repeat, physical proximity and compatibility with a grocery store are not relevant to this case. Some liquor stores are close to residential areas. Using this logic I guess you could petition to add liquors stores to R-20 and sell booze from your garage?

Implied Burden of Proof

Before I articulated the proper process for adding uses to recorded FDPs, I addressed the unusual circumstance of my substantively different comprehension of the proper administration and enforcement of land use in the "NT" floating zone from the Director of Planning and Zoning. To be clear, the DPZ Director is the legally empowered officer in Howard County to enforce the Zoning and Subdivision Regulations. Accordingly, his interpretation of these same regulations is in effect the "law." Therefore, if a Party to a case such as this one enters testimony that contradicts the Director, they have a high implied burden of proof to show definitively that the Director misinterpreted the regulations. This is done by citing and explaining specific code sections and legislative history. Apparently, my testimony was be highly persuasive for the Planning Board to ignore the Director's recommendation and deny the

petition. To meet this burden, I cited several code sections and entered several exhibits of legislative history that make this showing.

To restate the question in this case: how often has a new retail use, or for that matter any new use, been added to a recorded FDP as an ancillary and compatible use?

The answer: Only once in the 50-year history of Columbia. As DPZ research concluded the only time that a retail use has been added to a recorded FDP under ancillary or compatible uses to an Industrial FDP is for the very same Wegman's store in 2007, FDP 117-A-II.

Other than FDP 117-A-II, and the instant case, the second time this was done in was August 2017 for FDP 36, Oakland Ridge Industrial Park, adding a Courthouse as an ancillary and compatible use. But the FDP 36 amendment is different because it does not change the underlying industrial employment use, whereas this amendment adds a retail use to an industrial FDP

In practice, when the original developer was selling commercial land, a buyer would require that their use be "by right" so in the event the use was not expressly provided, the developer would amend the FDP to allow for it.

The Petition before the Planning Board requested to add a "use" and restricts this use to one lot, in one room, in one building. This is "spot zoning" and it does not conform to the regulations and practice for adding uses to Final Development Plans. As you will see in the following discussion, the process used to add the Grocery Store in 2007 was not in compliance with the regulations and unprecedented before or

since. This is further substantiated by the rejection of this very same proposal by DPZ in 2004.

So, if this is not the proper procedure, is there a provision in the HCZRs to allow additions of uses to recorded FDPs?

The answer is yes, it is set forth in Section 125.A.8

Proper Procedure for adding uses to Final Development Plans.

The issue of adding uses to previously recorded FDPs has been a recurring question since the inception of Columbia. It came to head in the late 1970s with gas stations proposed in the Oakland Ridge Industrial Park and another in the very same Sieling Industrial Park in the instant case. The cases over these uses were vigorously contested all the way to Maryland's highest court. In response to a request for a clarification by in Judge McGill in 1978, a legal opinion was rendered by the Office of Law. The Office of Law opined that it was *"... the Zoning Board's intention not to enlarge or diminish the uses already assigned to new town parcels that have undergone the final development process under the old regulations."* In other words, in their limited sub-delegation of land use power the Council intended that the Planning Board not expand or restrict the uses on recorded FDPs. This coupled with Section 125 D.6 that says:

"*Upon approval of the Final Development Plan or Final Development Plan Amendment the same shall be recorded among the Land Records of Howard County and the provisions thereof as to land use shall bind the* ***property*** *covered with* ***the full force and effect of specific Zoning Regulations***." This provision locks in the uses with no provision for amendment. The purpose of the lock up was to give

control to the original developer so that they could fulfill their obligation to comply with land use percentages stipulated in Section 125 A.8.a.

This was the practice of DPZ until 2003, when an amendment was made to the Section 125A.7.e (now part of 125.A.8) that provided for a process to allow additional use through the FDP referenced zoning district, i.e. M-1, B-1 etc. The timing of this amendment coincided near the end of active development in Columbia and the growth of successor owners that needed other permitted uses to utilize their buildings.

An example of this process in action was done in the 2013 Comprehensive Zoning when 9 additional uses were added to Section 122, M-1.

Attached, is the additional supporting documentation that show the proper procedure for adding uses in the NT zone for FDP's that reference a zoning district as the basis for permitted uses.

(together Exhibit B)

1. A text amendment from 2003 that DPZ inserted in the code to facilitate the expansion of uses on FDPs.
2. A text amendment for M-1 in the 2013 Comp. zoning cycle where several new uses were added and clarified. This is a prime example of the 2003 amendment in action.
3. Letter dated December 3, 2003 from DPZ declaring that a Grocery Store is not a permitted use on FDP 117.

Definition of Ancillary Under the HCZRs:

The Board also directed DPZ to define "Ancillary." Ancillary is not a defined term in the Zoning Regulation, "accessory uses" are defined. The common definition of ancillary is: providing necessary support to the primary activities or operation of an organization, institution, industry, or system. "the development of ancillary services to support its products"

Conclusion:

In the 2003 Comprehensive Zoning, a provision was added to allow for additional uses either through Comp Zoning or ZRAs. The text amendment provides for uses to be added through the "by right" permitted uses in the FDP referenced zoning districts. It is evident that that the intent for adding uses in the NT zone was through a **legislative** amendment to the HCZRs **not** by having the Planning Board add a use under the ancillary and compatible catch all in the FDP.

FDP 117 covers 181.4 acres over numerous lots and land condo plats. It is clear that the proper process for adding uses under Section 125 of the HCZRs is set forth in Section 125.A.8. As the Planning Board's Attorney argued, and you concurred, there is no provision that authorizes the Planning Board to ad hoc add rifle shot retail uses under the ancillary and compatible list to a recorded FDP. Adding uses in this fashion results in the odd condition of having ancillary uses that are ancillary to the ancillary use. Over time this would effectively rezone all of the property from covered by this FDP from industrial to retail commercial.

As I have shown, if Wegman's wants to rezone this property to allow a liquor store there are provisions to do just that under Section 125.A.8 of the HCZRs. This discussion articulated in exquisite detail the proper sections of the regulations, their legislative history and the history of FDP administration. The Director's reply cited no sections of the regulations and provided no context of legislative history. While the Director is the empowered officer, he is bound to exercise this power within the confines of the law. The Planning Board believed that I met the high burden of proof and denied the petition.

4. **Improper Exclusion of Evidence that is relevant, reliable and material, including the FDP amendment, 117-A-II that is the very basis of your Decision.**

As I noted in 4 above, the exclusion of relevant material evidence and testimony in the record resulted in fundamental flaws in your analysis. Your characterization of my testimony was distorted because you did not have the benefit of all the evidence. Rules of evidence under the HEROP are very discretionary, but you should strive to hear all testimony that has a bearing on the case before you. I was hampered in my presentation because I had to fend off the objections while attempting to make coherent testimony. None of the evidence offered was irrelevant, unreliable, or unduly repetitious.

In addition, while you cite several FDP amendments in the D&O, at the outset you specifically excluded any discussion on FDP amendment 117-A-II that added the grocery store to the subject **FDP that is at the heart of this dispute** and that you for all intents and purposes you used as the basis for your Decision. Undoubtedly, you were under great pressure to suppress this evidence because the Planning Board's decision effectively nullified the previous FDP amendment adding a grocery store as an ancillary use. Also, the Planning Board's attorney may be conflicted as he was Counsel when this amendment was approved so he was not going to raise any objection. And excluding this evidence benefited the petitioner. I can understand the petitioner's position, but you are bound to uphold Howard County law. You are charged as Hearing Examiner to impartially hear all relevant evidence and testimony and render a decision. The exclusion of the previous FDP amendment from evidence irreparably prejudiced this case.

And notably, you excluded evidence related to a 2003 denial of an amendment for the very same Wegmans, a copy of this denial that is included in **exhibit B**, and you excluded the Master Adopted FDP Criteria that governs the Planning Board on FDP criteria, the relevant pages on Commercial Employment Industrial land uses and ancillary uses is included as **exhibit C.**

5. **Spoliation of Evidence and an adverse inference**

At the hearing, we learned the Comprehensive Sketch Plans ("CSPs") for Columbia were destroyed by the previous Director. This is critical, because, the FDPs during the development phase are required to follow the CSPs. Furthermore, Mr. Rutter introduced FDP amendment 117-A-1, January 25, 1994 adding a communications antenna to the County water tower. This amendment was done under the **Final Development Phase criteria and or Maps Policy of the Howard County Planning Board, adopted August 2, 1967, revised September 11, 1968,** known colloquially as the Resubdivision policy. *A copy of the minutes adopting this policy are attached* as **Exhibit D**. The adoption of this policy is recorded in the Planning Board minutes for these dates, the custodian of these records is the Director of DPZ.

We can ascertain the terms of the Policy is by reviewing the text of the resolutions recorded. Based on this, it is apparent that it requires a submission of the names of property owners covered by the FDP and an attestation by the Director the amendment does not change or alter the underlying character of the FDP. The amendments summarized in the TSR were all done under the Policy. Attached, is a of a copy of the resolution that was recorded for this amendment as **Exhibit E**.

I have made numerous PIA requests for this Policy and they claim they cannot locate it. Apparently the PB policies were destroyed. Perhaps the previous Director destroyed them along with the Comprehensive Sketch Plans.

The destruction of these records is tantamount to spoliation of the evidence. The parties to this case were deprived of these critical documents that impaired their ability to mount an effective defense. As you know, in a court of law spoliation of the evidence can result in an adverse inference finding. What sort of adverse inference would you make? Certainly, the Agency has a legal obligation to retain these records

in perpetuity. The inference I would make is that Department of Planning and Zoning destroyed these documents to hobble any efforts to hold them to account for their extra-legal actions.

Also, the destruction of these plans and policies led you to your illegal and illogical "commensurate benchmark" rationalization to supplant certain provisions in the HCZRs with other provisions.

And as you wrote in your "Final Note", "neither the Planning Board nor the Hearing Examiner may write Zoning Policy through their decision-making." By willfully ignoring the absence of Authoritative regulations and policies isn't that what in effect you are doing here?

6. Misapplication of the Burden of Proof

Under Section 10.2(c) of the HEROP it says, "*in any other appeal of an administrative agency decision, the petitioner must show by substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law*."

As I observe in number 2 above, the Petitioner submitted no evidence that the Planning Board's action was clearly erroneous, arbitrary and capricious, or contrary to law. Upon your initiative, you based your decision on erroneous inferences of cryptic hand-written notes and non-existent testimony. It is evident from the text in your decision that the petitioner did not present any evidence to meet their burden of proof. How can a petitioner submit no evidence and meet the standard of substantial evidence? They could have submitted evidence from the Planning Board proceedings to meet their burden but they did not. What inference would you make from this fact? Moreover, the objections to my evidence raised by the Petitioner's counsel and upheld by yourself was largely evidence I produced for the Planning Board that successfully persuaded them in the face of fierce opposition from DPZ and the OOL. You lamented several times how difficult your task was to adduce the rationale of the Planning Board, yet you went along with the petitioner and excluded evidence that was used by them in making their determination.

To turn a phrase, it is beyond any reasonable doubt, that the Petitioner did not meet their burden of proof

in this case: by substantive evidence.

7. **Hearing Examiner added evidence to the closed record depriving parties from responding, cited FDP amendments that are not relevant or applicable to this case, excluded from consideration the Wegman's FDP amendment, and made a Decision despite the absence of provisions in the Zoning Regulations for redevelopment outside the Villages and Downtown as admitted by OOL with concurrence by you.**

The D&O discussion is broken down into five (5) subsections: I.) applicability of FDP 117 A II Criteria &D; II.) analysis of Christopher Alleva's testimony that I address extensively in 3. Above; III.) The Legal Effect of the General Plan; IV.) Economic competition; and V.) DPZ TSR Evaluation.
In the D&O you refer to article 10.1. of the HEROP, "*Evidence to be Considered. The hearing examiner may only consider the evidence in the record when making a decision; however, the hearing examiner may use his or her experience, expertise, and knowledge of the property and the area in making a decision.*" While it is generally helpful to the proceedings for you to share your experience, expertise and knowledge, introducing evidence after the record has closed is beyond the intent of this rule.

I will now dissect the D&O, parts I.II, III, IV, and V, purportedly the factual the basis for your decision.

I. This exhaustive survey of the History of FDP Criteria is all very interesting, for example I had never heard of the "Brown" report cited, but in the end it is irrelevant and fails to support your decision to approve. At 22:48 of the July 20, 2017 recording of the hearing, Mr. Paul Johnson, Counsel to the Planning Board notes that there are no provisions for amendments to FDPs in the current HCZRs. You concurred with this observation. Accordingly, the

inescapable conclusion is that there is no legal process to amend recorded and built FDPs. As I explained in number 4 above, recorded and built on FDP lots can only be amended by the County Council pursuant to the Charter Article 202(g.), except for minor amendments that do not change the character of the FDP such as FDP 117 A-1 that permitted a communications antenna on the water tower.

II. See number 3 above. Also, in connection with your review on my testimony, you cite five (5) FDPs to establish a record of precedents to support conclusion. Unfortunately, your examples don't prove anything. FDPs 25-A-IV and 3A were done under the **Resubdivision Process** I discussed in number 6 above. Copies of the resolutions are **Exhibit F**

And your last two examples are not relevant. FDP 239 was never amended. By this time FDPs stopped using referenced zoning districts and only listed permitted uses.

Based on my aforementioned analysis, the FDP 184 amendments were done illegally. But it should be noted, they did not add the a use as an ancillary use.

Adding Commercial Retail uses under the catch all ancillary and compatible uses on the FDP is improper.

In the half century of Columbia's existence, only once has the Planning Board added a commercial retail use to an Employment Industrial FDP. Not coincidently, it was FDP 117 A II which involves the very same FDP as this appeal.

It is evident that none of the FDPs you cited in any way shape or form support your conclusions. None of them added a use under the ancillary catch all. As I have shown, two of them were done legally under the Resubdivision Policy.184 A-IV was done illegally by the Director, and 184-A-5 added a specific use.

A single FDP amendment over half century covering a development of 14,200 acres and 242

recorded FDPs does not constitute a precedent that can justify a reversal of a valid Planning Board decision.

III. The Legal Effect of the General Plan

I am not going to spend much time on this, but I will say consistency with the General Plan was not the primary basis for the Planning Board's decision. Your analysis narrowly defines "action" to conclude that this petition does not have to comply with the General Plan. The more important issue, the one the Planning Board addressed in their work session is the applicability of the General Plan as it relates to floating zones like the NT zone.

Professor Reno's analysis sets forth the requirements to have a legally sufficient floating zone that you allowed into evidence as exhibit 6. Reno enumerates three (3) requirements that must be met to establish a floating zone. It should be noted, amendments to the HCZRs for the Village and Downtown redevelopment, had companion General Plan amendments.

Legal Requirements for a floating zone are:

1. Zone must be Specific as to Boundaries
Land was specifically identified in 1965. There are sunset provisions in the original NT, accordingly, redevelopment in the floating zones requires new specific boundaries be set for areas to be redeveloped. Boundaries are identified for the Downtown and Villages

2. Requires the Adoption of a Comprehensive Plan by a Legislative Body.
This requirement was satisfied under the Original Columbia M & O. The regulations provide for comprehensive plans for the Downtown and Village Center Redevelopment amendments. There is no process to create successor Comprehensive Plans for redevelopment of other commercial areas.

3. Process for designating uses by an Administrative Body delegated state police power over zoning, to sub-delegate such power to an administrative body.

Reno indicates that the Maryland Courts have held the validity of these sub-delegated powers so long as there are specific standards set out by the legislative body in the zoning ordinance. In the HCZRs.,

specific standards are set forth in the original Columbia M & O and under the Downtown and Village Center Redevelopment amendments. No standards have been established for redevelopment of other commercial areas, including FDP 117.

With the adoption of a legally enforceable floating zone, Approved development plans are to be recorded on the land records to fix the zoning to the land and assure substantive due process.

Below is a table that matches the provisions under section 125 of the HCZRs with the requirements for a legally enforceable floating zone for the original Columbia development, the Downtown and Village redevelopment, and the lack of regulations for the balance of the other Columbia Employment Industrial and Commercial areas.

Table 1 HCZRs Satisfying Requirements for a floating zone, Section 125 NT

Floating Zone Requirements	**Original Columbia Applicable Zoning Regulation** *(expired)*	**Downtown Revitalization Applicable Zoning Regulation**	**Village Center Redevelopment amendment Applicable Zoning Regulation**	**Redevelopment Regulations covering Columbia Employment Industrial and Employment Commercial Areas**[1]	**Comments**
1. Zone must be Specific as to Boundaries	125.B	125.A.9	125.B.1a & b and 125.J.4a(2)	No regulations exist. Called for in Plan 2030.	Original plan has expired. Any redevelopment in a floating zone requires establishment of new boundaries
2. Requires the Adoption of a Comprehensive Plan by Legislative Body.	125.1c and 125.B.2 with creation and adoption of the Preliminary Plan by the Zoning Board	125.A.9 and 125.J.4a(1)(3)(4)(5)(6)(7) and (8)	125.J.5,6,7, and 8	No comprehensive plan exists. There is no process for it's creation in the regulations. In 2012, Policy 10.2 of Plan 2030 called for a new	Original plan sunsets and redevelopment and requires adoption a comprehensive plan for the redevelopment area. The General Plan was amended to

				comprehensive plan.	underpin Downtown Development
3. Process for designating uses by an Admin. Body delegating the state police power over zoning, to sub-delegate such power to an administrative body.[2]	125.C and D	125.E	125.H.6,7&8 and 125.C&D	There are no standards in the existing regulations to sub-delegate to the Planning Board.	The law requires specific standards.

1 *This includes among others, the EGU Industrial Park, Oakland Ridge Industrial Park, Twin Knolls North and South, the Sieling Industrial Park, the Rivers Industrial Park, the Broken Land Business Park, the Hillcroft Office Park, and other commercial areas such as Dobbin Rd Commercial.*

Your analysis completely ignores the relevance of the General Plan/Comprehensive Plan in the administration and enforcement of the NT zone in Howard County, a floating zone, and the fact that there are no specific standards in the other commercial areas, including FDP 117 for the County Council to sub-delegate their Charter mandated land use power to redevelop on the subject FDP.

Additionally, Table 1 corroborates the observation of Mr. Johnson's noted above that there are no provisions in the HCZRs.

Developing a greenfield floating zone is like a puzzle. When Columbia was being built out the Planning Board was charged with making the pieces fit together within the boundaries of the picture drawn by the County Council. Once the puzzle is finished and the pieces (the FDPs) fit together, you can't just interchange the pieces, it will never fit again. This is why a successor Preliminary Plan must be filed to redevelop in a floating zone like NT.

IV. Economic Competition

The Planning Board never considered economic competition. How you adduced this is a mystery and the D&O offers no support for this assertion. To the extent the Planning Board concerned themselves with

this question, it was based on the spot zoning implications that would give Wegman's a market advantage over other grocers. And a review of the recording shows no witness offered testimony that accords with your description. Please note that Giant Foods testified at the Planning Board meeting.

V. DPZ TSR Evaluation

Change as the Basis for DPZ's recommendation to approve.

The basis of the TSR is that the area has changed. Two things, first, The Zoning Board is the designated Zoning authority in Howard County and they have the sole authority to determine whether a change has happened in an area.

Second, the only change that has occurred in the last decade has been the Wegman's. The adjacent properties all have uses that are permitted in the M-1 zone, restaurants, banks, furniture stores, and motor vehicle sales. Evidencing this that the SDPs were approved in 1974, 1996 and 2005. This whole area has long been zoned M-1 Industrial and NT with an M-1 use reference.

Change or mistake is under the County Council's authority. DPZ and the Planning Board has no authority to make this determination.

8. The Decision Violates the Howard County Charter

In your final note, you cite portions section 125.D.6 of the HCZRs to the exclusion of the operative clause, "full force and effect of a specific zoning regulation."

Under the Charter only the County Council has the power to alter or change land use and zoning regulations, and under section 125.D.6 it declares an FDP is equivalent to a Zoning Regulation.

Over to the Howard County Charter:

Section 202 County Council

(g) *Planning and zoning.*

1. Any amendment, restatement or revision to the Howard County General Plan, the Howard County **Zoning Regulations** or Howard County Zoning Maps, other than a reclassification map amendment established under the "change and mistake" principle set out by the Maryland Court of Appeals, **is declared to be a legislative act and may be passed only by the Howard County Council** by original bill in accordance with the legislative procedure set forth in Section 209 of the Howard County Charter. Such an act shall be subject to executive veto and may be petitioned to referendum by the people of the county pursuant to Section 211 of the Charter.

And now to the HCZRs:

Section 125.0.D.6 *that states after an FDP is recorded, it has the force and effect of a* ***specific zoning regulation****. After such recordation, no new structure shall be built, no new additions to existing structures made, and no change in primary use effected different from that permitted in the Final Development Plan.*

Additionally, Section 125.D.8. covers the FDP development process. Typically, an FDP would be recorded and construction of a building would commence on a lot within the FDP. D.8 permits the Planning Board to amending FDPs only on land where construction has not commenced. It also protects the property owner from having an approval revoked after construction commences.

Commencement of construction is a key point. This tracks with Maryland State law that zoning does not vest until a foundation is put in the ground. Additionally, the term "specific zoning regulation" in D.6. was drafted this way to make it clear that only the County Council can amend an FDP after it is recorded on the land records and construction has commenced.

As you know, there was an existing building on the lot the when Wegmans was approved. Hence in accordance with section 125.D.6 and the Howard County Charter, the Planning Board has no authority amend recorded FDPs with built on lots.

This means that this Decision and Order approving the FDP amendment violates the Charter.

Moreover, this argument is affirmed by the fact that the HCZRs had to be amended to allow redevelopment in the Downtown and the Villages.

9. **Conclusion and request for a hearing and a suspension of the Decision and Order**

   The principle mistake in this D&O is that you endeavored to rewrite the HCZRs that is well beyond your very limited authority. Additionally, I have detailed numerous mistakes in your narrative discussion that clearly prove there is nothing in the evidence, or in the HCZRs to support the conclusion reached in this D&O.

   I have raised serious issues regarding the Decision and Order written for BA 735-D, Science Fiction LLC, an agency appeal of a Planning Board decision denying FDP amendment FDP 117-A-III. Under article 10.6 of the HEROP, Form of Decision, the article requires that the D&O "contain findings of fact, conclusions of law, and an appropriate order."

   The Decision and Order has material misstatements of fact that in part the D&O relies on to make the Decision. And there are material inconsistencies between evidence and testimony in the record and findings of fact in the D&O from both the Petitioner's witnesses and the Opposition witnesses.

   Additionally, this motion alleges improper exclusion of evidence, spoliation of authoritative evidence that inhibited the Opposition's defense and prejudiced the proceedings.

Furthermore, the motion alleges the Hearing Examiner included evidence in the D&O in violation of article 10.1 of the HEROP and hence exceeded their authority under this article.

Finally, the motion alleges that the burden of proof was misapplied and that the Decision violates article 202.g of the Howard County Charter by usurping the Power vested in the Howard County Council to amend "Zoning Regulations." So you violated the Charter in twice. First with your "commensurate benchmark" regulatory substitution and by amending the FDP itself,

Based on the reasons outlined herein, I hereby request a hearing and a suspension of the Decision and Order to reconsider the Decision and Order for BA 735 D Science Fiction LLC.

Respectfully Submitted

Christopher Alleva

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Email:jens151@yahoo.com
443 310 1974

November 6, 2019
ZB 1120 Enterprise Homes Motion to Dismiss
Christopher Alleva

The Honorable, Elizabeth Walsh
Chair, The Howard County, Maryland Zoning Board
3430 Courthouse Dr.
Ellicott City, MD 21043

Subject: **ZB 1120 M Enterprise Homes, Motion to Dismiss**

The undersigned hereby submits this Motion to Dismiss as a preliminary matter under Zoning Board Rules of Procedure 2.403.D.1 Docket, Preliminary Matters.

This motion arises from written and oral testimony I and others provided at the Planning Board on January 3, 2019 that is attached and incorporated by reference herein. I testified that there are **NO** provisions in the Zoning Regulations that permit amending the Columbia Preliminary Development Plan in this fashion for this purpose. The Planning Board (the "PB") referred this question to their counsel, David Moore from the Office of Law. In the recommendation, Mr. Moore addressed a narrow ancillary question, if the absence of any regulations governing this petition, precluded the PB from making a recommendation? To which he answered that they could make a recommendation since it is advisory, and "that this issue is within the Zoning Board's purview." So here we are.

Basis for the Motion to Dismiss

1. ***The NT District regulations do not contain criteria to evaluate amendments to an approved NT PDP.***

November 6, 2019
ZB 1120 Enterprise Homes Motion to Dismiss
Christopher Alleva

Under section 2.403.D.3 of the Zoning Board Rules of Procedure (the " ZBROP") the burden of proof in all cases is one of a preponderance of the evidence and is on the petitioner to show by competent, material and substantial evidence, that he or she is entitled to the relief requested and that the request meets all prescribed standards and requirements. As there are NO prescribed standards and requirements, it is impossible to apply this burden of proof.

The Charter does not allow the Zoning Board to arbitrarily apply criteria from an old Zoning Board case. To do this properly, you need to legislatively amend the General Plan and the ZRs. There is an important public interest at stake here. There are equal protection and procedural due process issues. It violates the Charter to substitute a criteria from a Zoning Board D&O for legislation.

This is why the Downtown and Village Center Redevelopment were done legislatively. This is why the General Plan calls for amending the NT regulations to provide for redevelopment. An illustrative question: when these FDPs are amended under what criteria will the legislative body subdelegate their power to the Planning Board for them to make their determination? These units are from the same pool as the Village Centers and would leave 1,086 units available for the other 7 Village Centers. 555 were consumed by Long Reach and Wilde Lake.

2. ***The Petitioner is not authorized under the Howard County Zoning Regulations to file this request.***

November 6, 2019
ZB 1120 Enterprise Homes Motion to Dismiss
Christopher Alleva

Under 2.403. A of the ZBROP petitions for approval or amendment of a preliminary development plan (the "PDP") may be submitted by those persons authorized by the Howard County Zoning Regulations. There are no provisions designating any persons in the HCZRs to amend the PDP in this form or fashion. Moreover, the corporation, Howard Research and Development Corporation that purports to have this authority to amend Comprehensive and Final Development Plans under several sub-sections of Section 125.0 of the HCZRs is **in fact not** the Original Petitioner. The Howard Research and Development Corporation that executed this petition is not the Original Petitioner. Per SDAT, the company registered as Howard Research and Development Corporation. SDAT No. D6061808 is owned and controlled by Howard Hughes. The new entity was created on November 30, 2000 to hold title to the residual Columbia land. It is an active corporation. The Original Petitioner, Howard Research and Development Corporation was formed in 1963. Obviously, a company formed 35 year later could not possibly be the Original Petitioner.

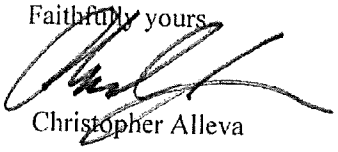
Based on knowledge and belief, the Original Petitioner, Howard Research and Development was owned by GGP. The successor entity by merger has been renamed GGPLP Real Estate Inc., a Delaware Corp., now controlled by Brookfield Retail Properties. Under the Development Agreement by and between HHC and GGP, GGP assigned their rights as "Community Developer" to the new HRD. The term Community Developer is not defined under section 125; this term was created in this Development Agreement. Original Petitioner is not an assignable right, if it were the County would wash up on the rocks of spot zoning.
I have notified the Office of Law numerous times that this Howard Research and Development Corporation is not the Original Petitioner.

November 6, 2019
ZB 1120 Enterprise Homes Motion to Dismiss
Christopher Alleva

Before this case can be heard, a ZRA to amend section 125 is required to provide for a successor PDP in these circumstances. The County has been "winging it" for some time in the NT zone. I don't think this County Council can abide by this and allow them to wing it anymore.

Accordingly, I respectfully request ZB 1120 be dismissed for the reasons outlined above, that there are no provisions for this in the HCZRs, and that the Petitioner does not have the authority to make this request under the HCZRs. And further direct a ZRA be filed to allow consideration of this case as well as permitting the applicant, Enterprise, to withdraw this petition so they can avoid waiting out the resubmittal period.

Faithfully yours,



Christopher Alleva
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443 310 1974

Attachment

CC: David Moore, Office of Law
Thomas Coale, Esq.
Joel Hurwitz
Zoning Board Administrator

January 3, 2019

Testimony, Christopher Alleva, ZB 1120, Enterprise Community Homes, PDP Amendment

Good Evening Ladies and Gentlemen:

Tonight, you are here to consider ZB 1120. You are not here to merely make a pedestrian recommendation to the Zoning Board, rather the stakes of this case could not be higher, you are here to deal with this County's fundamental principles of consensual self-government. This is about the County Charter, the legislative process and basic rights.

Let's start by calling your attention to paragraph V. Evaluations and Conclusions from the staff report (the key passages are bolded and italicized).

The NT District regulations do not contain criteria to evaluate amendments to an approved NT PDP. Rather, Section 125.B.3 provides "guides and standards" to evaluate petitions that establish entirely new NT districts, by applying them broadly to large land tracts. Unfortunately, these guides and standards were never envisioned to assess minor amendments affecting specific parcels. ***However, in a previous NT PDP amendment case (ZB 1112M), the Zoning Board established the following criteria for NT PDP Amendments***

DPZ and the Petitioner, freely admits that there are no provisions for this in the Zoning Regulations and instead are applying criteria that was created in a 2012 Zoning Board action (ZB 1095) and referenced in a 2017 case ZB 1112, Grandfathers, Long Reach. DPZ characterizes this as a "minor amendment. ZB 1112 was for 19 unit, this is for 300 units. If old ZB cases are applicable, it appears ZB 1031 M **(Exhibit A)** is operative. *Under finding 10(a) a procedure for density was established that contemplated formally petitioning a Village Board as was done in ZB 1112, Grandfathers.* I can vouch first hand that we designed it like this because the Village Associations are the primary institution in place to protect property values as several of you have served on Village Boards are well aware.

The Charter does not allow the Zoning Board to arbitrarily apply criteria from an old Zoning Board case. To do this properly, you need to legislatively amend the General Plan and the ZRs. There is an important public interest at stake here. There are equal protection and procedural due process issues. It violates the Charter to substitute a criteria from a Zoning Board D&O for legislation.

Moreover, the process used for ZB 1112 was a special case necessitated by DPZ's and the Zoning Board's mistake. Also, please note, that ZB 1095 was for undeveloped NT land. Allow me to flush this history out. Not coincidently, I had a hand in resolving this problem in my effort to free Grandfathers' nursery from under the clutches of the Howard Research and Development Corporation.

- February 2004, Amended PDP approved, 100 density units secured for Grandfathers, Rouse HRD agrees to release Deed restriction.
- October 2005, Decision upheld on appeal
- October 2006, Alleva Letter to M. McLaughlin, DPZ Director outlining process to formally assign units to Grandfathers. **(exhibit B)**
- 2007. GGP, Howard Research and Development Corporation Reneges on promise to release deed restriction. Draft release negotiated. **(exhibit C).**
- 2009, GGP, Howard Research and Development Corporation pledges to release deed restriction.
- 2010, GGP/HRD reneges on promise after receiving several hundred million dollars of entitlements from the County.
- April 2012, ZB 1095 Zoning grants PDP amendment under non-existent criteria being used today.

- July 2012. ZB 1096 DPZ and Zoning Board erroneously assign 100 units from the 2004 PDP amendment to Wilde Lake Village Center Redevelopment.
- July 2017, ZB 1112 Grandfathers approved to correct 2012 DPZ and Zoning Board error.
- March 2018, Howard Hughes HRD releases the deed restriction.

Fundamental principles of self-governance dictate that legislation needs to come first. The State granted the citizens of Howard County the right of self-governance in our Charter. It sets forth the terms and condition for electing a Council and Executive which constitutes the consent of the people to be governed. The power to enact laws through the legislative process is consent by the people to a specific duty to do something or not do something.

The County requires you to take your trash to the curb and the County prohibits storage containers on your property and will fine you for having one. These are important but mundane laws. It amazes me that County is so cavalier about this. This has been in the works for more than a year. They could have easily put in a Zoning Regulation Amendment, instead, they're just winging it. An aside, institutional grade investors would not go along with this scheme. It is too vulnerable to a challenge.

Section 202.g) Planning and zoning the Howard County Charter provides:

> *1. Any amendment, restatement or revision to the Howard County General Plan, the Howard County Zoning Regulations or Howard County Zoning Maps, other than a reclassification map amendment established under the "change and mistake" principle set out by the Maryland Court of Appeals, is declared to be a legislative act and may be passed only by the Howard County Council by original bill in accordance with the legislative procedure set forth in Section 209 of the Howard County Charter. Such an act shall be subject to executive veto and may be petitioned to referendum by the people of the county pursuant to Section 211 of the Charter.*

This is why the Downtown and Village Center Redevelopment were done legislatively. This is why the General Plan calls for amending the NT regulations to provide for redevelopment. Question, when these FDPs are amended under what criteria will the legislative body subdelegate their power to the Planning Board for them to make their determination? These units are from the same pool as the Village Centers, and would leave 1,086 units available for the other 7 Village Centers. 555 were consumed by Long Reach and Wilde Lake.

Perhaps, the motivations for doing it this way is that in the future if another owner makes this request they can just as easily turn it down for the reasons I have cited. Think about this, the County is nullifying the Zoning Regulations.

As I have said in the past, this may be a good idea. If it's such a great idea, why not do it properly? Undoubtedly, the Petitioner and DPZ, in good faith believe they are complying with the substance over the form. They held a pre-submission meeting notified adjoining property owners, unfortunately form is paramount here. In this instance the formal procedural rules of the Zoning Board provide cover by restraining the discussion allowing the petitioner to set the terms. Doing it legislatively would engender far more open and transparent discussions along with greater probability of arousing dissent. As challenging as it can be, that is by design and it is the small price we pay for limited, small "r" republican; small "d" democratic self-governance. Most important, legislation would be equally applicable to all.

I expect the Planning Board and Zoning Board, will turn to the Office of Law on this and they will cover for the Boards by dismissing these allegations. The Chairs will look to the OOL attorney and she/he will hand down the tablets from Mount Sinai and make the pronouncement that everything is perfectly legal. Nevertheless, I urge the Planning Board to save themselves from violating the Charter and remand this back to the Department of Planning and Zoning with instructions to file a Zoning Regulation Amendment. This is a policy matter that needs to be addressed legislatively not by conveniently picking things from old Zoning Board decisions.

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NEW "CEF" Zoning. What does "CEF" really mean?

The County defines CEF as a "Community Enhanced Floating" district zone. Not only are these new zones controversial, the process by which they are being granted is illegal.

For those not familiar with zoning lingo, a CEF zone is a floating zone, which means it "floats" on top of an existing zone. A parcel owner can use either the regular zone or the floating zone, depending on which is more favorable for what is planned for the parcel. Unlike other zoning categories, CEF zones have few regulations (height, density, setbacks, etc.), which make them controversial. Because of the relaxed regulations, CEF developers get a lot more economic benefit. In fact, those who oppose CEF say it stands for "Customized Economic Freebies" (for the developers).

The intended benefit to communities is that CEF zones require more neighborhood enhancements and amenities. It is a simple trade-off – in return for relaxed rules, developers provide more to the community. Unfortunately, the criteria around these enhancements are loosely-defined in the regulations, and current CEF plans only provide small amenities, such as a bike trail and some park benches – amenities that should already be included in the development. We have not yet seen large neighborhood amenities in these plans.

For communities that take issue with a planned CEF nearby, take note. As I said earlier, no CEF zone granted by the Zoning Board should legally stand. This is because there is a discrepancy between the Howard County Charter and the Howard County Zoning Regulations. The Howard County Charter (Section 202(g), for those who want to check) states that ONLY the County Council has the authority to grant zoning changes, as they must be done via legislation. The ONE exception listed clearly is in a "change or mistake" case. If a property owner can prove that a mistake was made in prior comprehensive rezoning, then the zone can be granted outside legislation (i.e., via the Zoning Board).

By definition, floating zones do NOT have to prove mistake to be granted. Thus, legally, it is not the jurisdiction of the Zoning Board to grant CEF zones. They must be granted by the Council, and only by the Council. Since the Howard County Charter trumps the zoning regulations, I like to think of CEF as "Charter Enforcement Foils."

In Howard County, the five Council members also function as the Zoning Board, so the same people are making the decision. Thus, is all this just an example of a distinction without a difference? Not really. When the County Council passes a piece of legislation (e.g., grants a CEF zone) it can be vetoed or taken to referendum. When the Zoning Board grants zoning, it can be appealed and taken to court. One can see pros and cons in either case.

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The problem is that if CEF zones continue to be granted by the Zoning Board, developers will have zoning in legal limbo, and be vulnerable to litigation. The solution is simple, and is a win-win for both neighborhoods and developers. For now, CEF zoning should be handled as legislation, and voted on by the County Council. Developers will have more security with reliance on the legal basis of their zoning, and communities get their rights upheld. If the Zoning Board wants to grant CEF without legislation in the future, they must revise the Howard County Charter, which is then put to the ballot.

Just keeping it real here. This is a new zone, and only three plans exist with it so far. Let's have the precedent set with abiding by the rules of the criteria, and the legally correct way to obtain it. Here is my request to the County Council/Zoning Board, "Set the bar high, so that this lucrative gift of zoning comes with a nice benefit, and not a low bar on what is defined as an enhancement to the community. It was supposedly instituted to give incentive to developers to provide more amenities. Make it so. In the meantime, opposition has a nice ace up their sleeve in litigation if it isn't granted correctly."

#CEF #ZoningBoard

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As of: 26 Oct

Agenda for Citizen Meeting with DPZ and Office of Law 11/3/2015 at 3pm

(Invited participants) - Lisa Markovitz, Brian England, Paul Verchinski, Amran Pashsa, Alan Schneider, Chris Alleva, John Garber, Susan Garber, Dan O'Leary, Stu Kohn

Topics/Suggestions	*Speaker*	*Time*
Introduction	*Stu Kohn*	3 minutes

~~To include DPZ Transition Team Report~~

I. Selective Enforcement — *Dan O'Leary* — 10 minutes

1. Zoning Violations – Targeting vs. Leniency/non-enforcement
2. Spot-Zoning Problems – Restricted, floating, manipulated zones

---

Chris Alleva / John Garber / Paul V?

1. Waivers /Redlines – Obey Waiver Authority - Hold Hearings — 10 minutes
2. Variances – Apply Variance Criteria per regulations

---

1. Verification of Environmental and Traffic Studies — *Lisa Markovitz* — 5 minutes
2. DPZ needs own reporting.
3. DPW should have to sign off on safety of requirements

---

1. Business Access — *Chris Alleva* — 10 minutes
   County Subdivision Regulations clear onto Arterial access, not allowed, must be extreme hardship exception only.
2. Standing Issue - have to prove Error in Code at 16.103 refers to 16.013 doesn't exist

---

1. NT/Columbia Assn enforcement/ Industrial Zoning Issues, FDP — *Brian England / Paul V.* — 10 minutes
   Freezing of building until process is defined

II. Boards/County Entities — *Susan Garber* — 10 minutes

1. Minutes, Responsibilities, Decisions to Post them where missing, and more timely where they are noted.
2. Quasi-Judicial/Hearing/Meeting criteria to be better Clarified and Publicized

---

1. CEF legal Issue ***Lisa Markovitz*** 10 minutes
   Only the Council has authority to grant floating zones but the Zoning Board is doing it. See HoCo Code 202(g).
2. Procedures of the Boards needs review and Testimony Policies need clarification as well as needing Predictability, and Commonality

---

1. DAP - Allow public input ***Stu Kohn*** 5 minutes
2. Written testimony is allowed per code.

III. Comprehensive Zoning Repair ***Dan O'Leary/Alan Schneider*** 5 minutes each

1. Inappropriate Issues BRX, Mortuary,
   Need ZRA's to potentially fix the problem
2. Suggestion to perform Comp Zoning by locations in 3 year cycles

---

IV. Zoning Regulation Review ***John Garber*** 10 minutes

1. Amend Regulations for clarity
2. Define Density Allowances
   as Maximums not guarantee and make this DPZ policy clear to Planners
3. Review of Codes / Definitions for clarity

V. Remaining Issue Details ***Amran Pasha*** 10 minutes

1. Business License Update should not be allowed if conditional.
2. Industrial Zoning Problems such as recreational uses

[HOWARD-CITIZEN] Digest Number 3931

1 message

HOWARD-CITIZEN@yahoogroups.com <HOWARD-CITIZEN@yahoogroups.com>
Reply-To: No Reply <notify-dg-HOWARD-CITIZEN@yahoogroups.com>
To: HOWARD-CITIZEN@yahoogroups.com

Fri, Apr 5, 2019 at 12:30 AM

Howard County Citizens Association **Group**

2 Messages **Digest #3931**

Messages

1a Re: Zoning and Planning Board Rules of Procedure Are Being Updated

Thu Apr 4, 2019 9:25 am (PDT) . Posted by: "LISA MARKOVITZ"

The People's Voice is proud to be in coalition with HCCA and working on these important issues. Our Board Members and all the HCCA Board Members thank Stu Kohn for his leadership and continuing to present community issues to government officials.

I hope that part of the zoning board procedural updates include fixing a problem with granting CEF zoning. For years, I have been pointing out to the County, including the Office of Law, that the Zoning Board is not allowed to grant this zoning. The Howard County code, Article 202(g), requires the Council to grant zoning map amendments, as legislation, which is subject to referendum. It specifically states that "ONLY" in cases of piecemeal rezonings, with change or mistake rules, can be done by the Zoning Board. There is no interpretation issue there. The Council must grant CEF's, as they are not subject to the change or mistake rule.

So far, community members have not decided to use this issue to appeal a CEF. I believe that once one is turned down, a petitioner would likely appeal..

Our current Council seems willing to take on fixing these types of problems, so I look forward to this being rectified, and having predictability for all sides. Another benefit is that the Council not having to wear their Zoning Board hats on these cases, will not preclude them from being able to discuss these cases with their constituents.

Thank you Chris Alleva for testifying on this matter at the recent procedural hearing as well.

Lisa Markovitz

LISA MARKOVITZ lmarkovitz@comcast.net [HOWARD-CITIZEN]
<HOWARD-CITIZEN@yahoogroups.com>
Reply-To: HOWARD-CITIZEN@yahoogroups.com
To: HOWARD-CITIZEN@yahoogroups.com

Mon, Jun 22, 2020 at 1:14 PM

Below is an excerpt from a draft letter The People's Voice is sending soon, to the County Council, containing, among other legislative wish list items, a request for Blight Laws. Thank you to all who provided great details to include in the request. Please feel free to suggest edits or additional information. Also, if you like, please suggest other wishes you would like to see made. I will pass any suggestions onto our Board, but we don't want to make it too long, of course. We have received a lot of pleas for Blight Laws for some time now.

We are sending this letter very soon, and if you wish, you can support or oppose any of these ideas, by emailing the council at CouncilMail@HowardCountyMD.gov

Thanks,
Lisa Markovitz

Sorry the copy/paste changed some formatting, but it is still readable. :)

.....

As you may know, The People's Voice (TPV) is a State civic and political organization, with approximately four thousand members in Howard County. Our Board has worked for many years trying to get more community input into quality of life issues in Howard County. Each year we request local legislation or procedural changes to be considered, but have held off a bit this year due to the pandemic. We appreciate many areas of assistance to County residents that have been considered, and ask for attention on a few matters that remain a concern.

1. * * *

2. * * *

3. CEF Zoning is legally a Council procedure.

For years, we have been asking the County and Office of Law to correct a procedural problem. According to the Howard County Charter, Article 202 (g), the Council is to decide on zoning map amendments (those that affect an individual parcel) and it says clearly with no gray area of interpretation, in 202(g), that the Zoning Board can ONLY change zoning when it is a piecemeal issue of change or mistake. Since CEF does not have to prove change or mistake, clearly the Zoning Board does not have the right to grant it.

The Council needs to be taking on CEF requests to follow the law. Not having the Council, appropriately, decide these cases, makes them more difficult to oppose, as appeal ends up in Circuit Court, and they cannot be subject to referendum. If it is desired for the ZB to retain CEF's, the charter needs amending. I would imagine that any CEF not granted, and appealed, would include this issue, and any granted where opposition wishes to appeal, this would be a serious appeal issue as well. Either way, the Council needs to grant them, or the charter needs amending.

Excerpt from Letter

The People's Voice

The People's Voice LLC

3600 Saint Johns Lane, STE D

Ellicott City, MD 21042

July 14, 2020

Dear Honorable Howard County Council Members,

As you may know, The People's Voice (TPV) is a State civic and political organization, with approximately four thousand members in Howard County. Our Board has worked for many years increasing community input in local government. Each year we request local legislation or procedural changes to be considered, but held off early in the year, due to the pandemic, then budget season. We appreciate many areas of assistance to County residents that have been considered, and ask for attention on a few matters that remain a concern, when possible.

Prior Years' Requests:

1. Only the Council can do zoning map amendments that aren't change/mistake!

For years, we have been asking the County and Office of Law to correct a procedural problem. According to the Howard County Charter, Article 202 (g), ONLY the Council can make zoning map amendments, via legislation. It states clearly, with no gray area of interpretation, in 202(g), that the ONLY exception is if a case is one of a piecemeal issue of change/ mistake. Since Community Enhanced Floating (CEF) zones do not have to prove change or mistake, clearly the Zoning Board does not have the right to grant ithem. Also, if a village center redevelopment entails a zoning map change, for instance to add residential units, that too is to be done only by the Council. Not sure how the NT zoning requirements mix into this here.

When the Zoning Board handles these matters, that are supposed to be done via legislation, it is more difficult to oppose those cases, and one ends up in Circuit Court to appeal them, and cannot subject them to referendum. If it is desired for the ZB to hold these proceedings, then the charter needs amending. I would imagine the current contentious matters being held would include this appeal point. In the future, either side not prevailing in a CEF matter, or other zoning map change granted by the Zoning Board, would have this appeal point, which is not good, as it would cause delay to desired projects, etc.

By Authority: The People's Voice PAC, Lisa Markovitz, Treasurer

A side benefit of having the Council appropriately grant map amendments that aren't change/mistake, is that a lot of cases would be removed from your zoning board duties. No more ex parte disallowed discussion on these topics. You would be able to discuss the cases with constituents which would please the public. No more contentious cross-examination of the public wanting to give input, solves a lot of problems there.

Sincerely,

Lisa Markovitz

President, The People's Voice

Charter Review Commission

George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043

(410)313-2001

Members:

Martha Clark
Tom Flynn
Sue-Ellen Hantman
Ernie Kent
Richard Kirchner
Thomas Lloyd
Shirley Meighan
Richard D. Neidig
Randall K. Nixon
John Peoples, Jr.
Lillie Price-Wesley
Bill Ross
Bruce F. Taub
Doris Thompson

Thomas Meachum
Chairman

WORK SESSION of SEPTEMBER 5, 1995

MINUTES

The work session was called to order in the Ellicott Room, George Howard Building, at 7:45 p.m. Members present were:

Thomas Meachum, Chairman Martha Clark Tom Flynn
Sue-Ellen Hantman Shirley Meighan John Peoples
William Ross Bruce Taub

The Minutes of the August 31, 1995, were unanimously approved.

The following votes were taken:

1. Article II, The Legislative Branch, §202, The County Council, Subsection (g), Planning and Zoning: Ms. Clark moved adoption of the *concept* of amending Subsection 202(g) to exclude "floating zones." Seconded by Mr. Taub. Ms. Meighan moved to table the motion pending the Commission's receiving an explanation of "floating zones, together with available legal opinions from the Office of Law and any Maryland Attorney General legal opinions on the subject and an opportunity for the Commission to clarify its understanding with Mr. Johnson, Deputy County Solicitor. Motion to table seconded by Mr. Flynn. Vote: Unanimous approving. Motion to table carried.

2. Article II, The Legislative Branch: Mr. Ross moved that all references in Article II to the "Secretary" be amended to read "Administrator." Seconded by Mr. Taub. Vote: Unanimous approving. Motion carried.

3. Article II, The Legislative Branch, §208, Sessions of the County Council; quorum; rules of

Charter Review Commission

George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043

(410)313-2001

WORK SESSION of SEPTEMBER 18, 1995

MINUTES

The work session was called to order in the Ellicott Room, George Howard Building, at 7:24 p.m. Members present were:

Thomas Meachum, Chairman	Martha Clark	Michael Davis
Thomas Flynn	Sue-Ellen Hantman	Ernie Kent
Richard Kirchner	Shirley Meighan	Bruce Taub

The Minutes of the September 11 , 1995, Work Session were unanimously approved.

The Commission scheduled future work sessions for October 2, 16, 23 and 30, 1995.

Deputy County Solicitor Paul Johnson met with the Commission to discuss the definition of "floating zones" as it relates to County zoning law in County Code and Charter.

The following votes were taken:

1. Article II, The Legislative Branch, §202, The County Council, Subsection (g), Planning and Zoning: Mr. Davis moved removal from the table of the motion to amend Subsection 202(g). Seconded by Ms. Meighan. Vote: Unanimous for. Motion to remove from the table carried.

[Motion removed from the Table was: to adopt the ***concept*** of amending Subsection 202(g) to exclude "floating zones."] The motion having been made and seconded at the September 5, 1995 Work Session was called for the vote. Vote: Unanimous for. Motion carried.

2. Article IX, §914, Definitions and rules of construction: Mr. Flynn moved adoption of the

Charter Revision Commission

George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043

(410) 313-2001

WORK SESSION of OCTOBER 30, 1995

MINUTES

The work session was called to order in the Ellicott Room, George Howard Building, at 7:22 p.m. Members present were:

Thomas Meachum, Chairman	Martha Clark	Michael Davis
Thomas Flynn	Sue-Ellen Hantman	Ernie Kent
Richard Kirchner	Thomas Lloyd	Shirley Meighan
William Ross	Lillie Price-Wesley	

The Minutes of the October 23 , 1995, Work Session were unanimously approved.

The Chairman informed the Commission that he had contacted Ms. Jimmie L. Saylor, the County Personnel Administrator, and Ms. Mariana Luce, the Deputy Personnel Administrator. The Chairman invited the Administration to provide its thoughts on the concept of elimination of all or part of Charter Article VII, Merit System, prior to the Commission's discussing the tabled motion regarding Article VII. The Chairman also reported that he had a similar discussion with Council Member Dennis R. Schrader.

Ms. Ruth Fahrmeier, Senior Assistant County Solicitor, distributed copies of a new Maryland Attorney General Opinion, which addresses the issue of whether recall of local elected officials is permitted under Maryland law. Ms. Fahrmeier reported that the Opinion indicated that recall is not permitted.

The following votes were taken:

1. Article II, The Legislative Branch, §202, The County Council, Subsection (b), Qualifications: At the August 31, 1995 Work Session, the Commission adopted the ***concept*** of amending §202(b)(3) to provide for forfeiture of office for failure to comply with any of the provisions of, Subsection (b), Qualifications.

Ms. Kent moved adoption of the following wording for the concept amendment to §202(b)

[amendment in capital letters, shading indicates words to be deleted]:

"(b) Qualifications.

"3. Forfeiture of Office. If a member of the Council ceases to be a qualified and registered voter of the County, MOVES HIS OR HER RESIDENCE FROM THE COUNCILMANIC DISTRICT HE OR SHE WAS ELECTED TO REPRESENT, ACCEPTS ANY OTHER OFFICE OF PROFIT OR TRUST OF OR UNDER THE STATE OR COUNTY GOVERNMENT, BECOMES EMPLOYED BY THE COUNTY OR ANY OTHER ENTITY WHICH RECEIVES FUNDS THROUGH THE COUNTY BUDGET, or is convicted of any crime involving moral turpitude, he OR SHE shall immediately forfeit his OR HER office.

"4. Change of Residence. If any member of the County Council shall move his or her residence from the Councilmanic District in which he or she has resided at the time of his or her election, such member shall immediately forfeit his or her office, but no member shall be affected by any redistricting during the balance of the then current term of office."

Seconded by Mr. Kirchner. Vote: Unanimous for. Motion carried.

2. Article II, The Legislative Branch, §202, The County Council, Subsection (f), Redistricting: At the August 31, 1995 Work Session, the Commission adopted the ***concept*** of amending §202(f) to provide that Council bills establishing new districts shall not be subject to Referendum under §211.

Ms. Kent moved adoption of the following wording for the concept amendment to §202(f) [amendment in capital letters, shading indicates words to be deleted]:

"(f) Redistricting.

"1. Boundaries. The boundaries of the Councilmanic Districts shall be established by the Council BY LAW IN ACCORDANCE WITH THE LEGISLATIVE PROCEDURE SET FORTH IN SECTION 209 OF THE CHARTER subsequent to the publication of each decennial census of the population of the United States, but not later than March 15 of the year following such publication. Any Councilmanic District established in accordance with this Article shall be compact, contiguous, substantially equal in population, and have common interest as a result of geography, occupation, history, or existing political boundaries. The Board of Supervisors of Elections shall take any necessary steps to implement any such revisions of the Councilmanic District Boundaries so adopted. ANY LAW ESTABLISHING COUNCILMANIC DISTRICTS SHALL BE EXEMPT FROM REFERENDUM."

Seconded by Ms. Price-Wesley. Vote: Unanimous for. Motion carried.

3. Article II, The Legislative Branch, §202, The County Council, Subsection (g), Planning and Zoning: At the September 18, 1995 Work Session, the Commission adopted the ***concept*** of amending §202(g) to exclude "floating zones."

Mr. Kirchner moved adoption of the following wording for the concept amendment to

§202(g) [amendment in capital letters, shading indicates words to be deleted]:

'(g) Planning and zoning.

"1. ANY ADOPTION OF OR AMENDMENT TO THE GENERAL PLAN, THE ZONING REGULATIONS OR THE ADOPTION OF ZONING MAPS IN CONNECTION WITH ANY COMPREHENSIVE ZONING PROCESS, Any amendment, restatement or revision to the Howard County General Plan, the Howard County Zoning Regulations or Howard County Zoning Maps, other than a reclassification map amendment established under the "change and mistake" principle set out by the Maryland Court of Appeals, is declared to be a legislative act and may be passed only by the Howard County Council by original bill in accordance with the legislative procedure set forth in Section 209 of the Howard County Charter. Such an act shall be subject to executive veto and may be petitioned to referendum by the people of the county pursuant to Section 211 of the Charter."

Seconded by Ms. Kent. Vote: Unanimous for. Motion carried.

4. Article II, The Legislative Branch, §208, Sessions of the County Council; quorum; rules of procedure, Subsection (b), Legislative Sessions: At the September 5, 1995 Work Session, the Commission adopted the ***concept*** of amending Paragraph (2) to add July and December to the designated months during which the council shall not hold legislative sessions, unless the council provides by resolution for a session in those months.

Mr. Ross moved adoption of the following wording for the concept amendment to §208(b)(2) [amendment in capital letters, shading indicates words to be deleted]:

"(2) There shall be no legislative session in JULY, August, AND DECEMBER, except for an emergency legislative session, unless the council provides by resolution for a session in August ANY OR ALL OF THE SPECIFIED MONTHS."

Seconded by Ms. Kent. Vote: Unanimous for. Motion carried.

5. Article II, The Legislative Branch, §209, Legislative procedure, Subsection (h), Failure of bills: At the September 11, 1995 Work Session, the Commission adopted the ***concept*** of amending Subsection (h) to permit extension of the deadline for failure of a bill two times instead of once.

Ms. Kent moved adoption of the following wording for the concept amendment to §209(h) [amendment in capital letters, shading indicates words to be deleted]:

"(h) Failure of bills. Any bill not passed within sixty-five calendar days after its introduction shall fail, unless, by affirmative vote of two-thirds of the members, the Council shall extend the deadline for another thirty days. THE COUNCIL MAY, BY AN AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERS, EXTEND THE DEADLINE FOR AN ADDITIONAL THIRTY DAYS."

Seconded by Ms. Price-Wesley. Vote: Unanimous for. Motion carried.

Amendment Analysis

Article II, §202(b), Qualifications

Work Session: **August 31, 1995**

Members Present: Mr. Meachum, Ms. Clark, Mr. Davis, Mr. Flynn, Ms. Hantman, Mr. Kirchner, Mr. Lloyd, Ms. Meighan, Mr. Neidig

Moved by: Mr. Neidig Seconded by: Ms. Hantman Vote: Unanimous for.

Notes:

The proposed amendment is a clear, logical restatement of existing requirements for forfeiture of office in paragraphs 3 and 4. Existing paragraph 3 should list all specifications requiring forfeiture of office for County Council Members. Existing paragraph 4, however, also requires forfeiture in the event that a Council Member moves out of the election district during the term of office.

Existing paragraph 2 stipulates: "No person shall qualify or serve as a member of the council: while holding any other office of profit or trust under the State or County government;...." The discussions by the Commission indicated that the Charter implied that a Council Member must resign from his or her elected office before accepting appointment to any County office or position or to be eligible for employment by the County. The proposed language of paragraph 3 would specify the consequence to a Council Member's accepting a State or County office of profit or trust, or a County employment position without having tendered his or her resignation.

Charter Revision Commission

George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043

(410) 313-2001

PUBLIC HEARING, February 15, 1996

MINUTES

The public hearing began at 7:40 p.m. in the Banneker Room, George Howard Building. Members present were:

Thomas Meachum, Chairman	Michael Davis	Thomas Flynn
Ernie Kent	Thomas Lloyd	Lillie Price-Wesley

A total of fifteen people signed up to testify. Attached is a copy of the sign-up sheet. sixteenth person , Geoffrey Silberman, also testified. Also attached are copies of the written testimony provided at the hearing by those who spoke.

The following is a recapitulation of the oral testimony, which was not included in the written testimony:

Mr. James M. Holway:

Mr. Holway provided three written pages as follows:

1) a chart covering his recommendations for each proposed amendment;
2) a copy of the "objectives" of the original Charter Board (1966); and
3) a copy of the "Forward" to the 1966 Charter Board Report.

Mr. Holway commented on his experience as a member of the original Charter Board, saying that the Board wanted to encourage public participation, but recognized that there was no way constitutionally to affect certain kinds of citizen behavior towards government. The Board decided that it was only possible to "put down as best you can, and trust the citizens to make officials behave."

Mr. Holway said that the last Charter Review Commission had passed an amendment to remove §§406-421 on the basis that these were "transitional" provisions. Mr. Holway disagreed with that conclusion, stating that §§406-421 provided fundamental powers to the people over county government. He expressed disappointment that this was not recognized and stopped by the

we should raise the number if signatures, he didn't see why the county council shouldn't be required to have affirmative votes of 80%.

Mr. Peter J. Oswald:

Mr. Oswald provided a written copy of his remarks (attached), which he read into the record.

Ms. Kent, responding to his testimony, asked what Mr. Oswald felt was wrong with the process of selecting citizens to nominate for appointment to the Charter Review Commission. Mr. Oswald answered that he was not familiar with the process that took place. At the point of the public hearing, the nominees were already selected. He stated: "There needs to be criteria, a systematic process for assuring that the mandate in the County Charter is met. I am asking the Commission to make sure that the mandate was met in selecting this Commission.

Mr. John W. Adolphsen:

Mr. Adolphsen read from the written copy of his remarks (attached)

Mr. John W. Taylor:

Mr. Taylor provided a written copy of his testimony (attached), which he paraphrased orally.

Mr. Taylor stated that floating zones should be eliminated through the Charter. Floating zones, he said, have three major problems: no predictability for citizens, no predictability for planners, and "property tax impacts." Mr. Taylor explained that a property owner may pay a tax rate, for example, for rural use, but may have an option to change to a mixed uses overlay. "The county is losing revenue on the difference in rates." He further stated that the amendments weaken citizens' rights.

Mr. Michael S. Custer:

Mr. Custer testified that it is important to keep the existing §202[(g)]. He stated, that if the language is taken out, it means that "they can pass any general plan they want, and then throw it out and revise. It is a scary thing to me as a citizen."

Mr. Custer expressed his opinion that the Commission did not address the issue of people being able to vote only for one council member. When three council members vote for something he disagrees with, he said, he can only vote on one council member. If the council can't vote unanimously, "it would be nice for me to be able to vote for at least three people.

Mr. Custer also stated that he believed that the people should vote to approve bond issues.

Regarding gifts, Mr. Custer stated that there should be a cap, for example, no more than $25 value.

Mr. Greg Brown:

Mr. Brown expressed his opposition to the proposed amendment to §202(g). He further

MINORITY REPORT

Regarding Article II, The Legislative Branch, 202(g), Planning and Zoning:

I originally voted for the proposed changes to this section of the Charter based on information provided to the Commission by the Office of Law.[1,2] My understanding at that time was that the Charter revision adopted in November 1994 ("Question B") posed potential legal conflicts with the Floating Zone classification in the existing zoning regulations. At the time the Commission voted on this section, I believed that the only way this potential legal conflict could be resolved was to specifically exempt Floating Zones from the legislative/referendum process by adopting the above amended language to the Charter. Upon further reflection, however, I have come to realize that the action that the Commission has recommended is akin to having the tail wag the dog. If there is a potential conflict between the Charter and the Howard County Code on the issue of Floating Zones, then the Code should be amended to conform with the Charter, not the other way around.

There is another, more troubling aspect of the language proposed by the Commission. The proposed language would limit referenda to only those zoning map or regulation changes made "... in connection with any comprehensive zoning process." The public testimony heard by the Commission made it eminently clear that the intent of the framers of Question B was to include all zoning regulations and all map amendments other than those established under the "change or mistake" principle. The language proposed by the Commission, if adopted, would open the door to removing all zoning regulation and map changes from the checks and balances of either public review under the Referendum or from Executive veto. The Zoning Board, sitting as the County Council, would merely have to adopt such changes in a piecemeal fashion declared not to be comprehensive rezoning.

Question B was passed by an overwhelming majority of the voters with the express intent of granting the citizens of Howard County some say, through the power of the Referendum, in the zoning issues that can greatly impact their lives. I do not believe that the will of the people should be subverted by adoption of the proposed amendment.

Tom Flynn

[1]Paul Johnson, oral presentation to the Commission, 18 September 1995

[2]Paul Johnson, Letter to the County Council, 19 December 1994

John W. Taylor
6528 Prestwick Drive
Highland, MD 20777

September 23, 2003

The Charter Review Commission
3430 Courthouse Drive
Ellicott City, MD 21043

Ms. Chairperson & Commission Members,

I offer the following suggestions for your review and consideration for our county charter:

Referendum – First Consideration

At least one commission member has suggested raising the number of signatures to "10% of qualified voters". At present the upper limit is 5000 signatures, and I recommend keeping the upper limit at 5000. According to the Board of Elections, there are currently a total of 157,872 registered voters in Howard County. 146,802 are "active" and 11,070 are "inactive", meaning the BOE does not know if those 11,070 even reside in Howard County any more. Choosing 10% of either 157,872 or 146,802 would have the practical effect of tripling the number of signatures required for referendum. Having to gather 15,787 or even 14,680 signatures in 60 days would be nearly impossible. The effect of this change, and perhaps the intent of the commission member making the suggestion, would a de facto elimination of the right to referendum.

It is not clear what "problem" would be addressed by increasing the requirement to 10% of qualified voters. The right to referendum is a basic right, it is not presently "broken", and certainly does not need to be made three times more restrictive.

Referendum – Second Consideration

There have, in the past, been ambiguities regarding what can be taken to referendum. Resolutions and tax increases have been ruled off limits. However, the charter does not clearly exclude either one, and under certain circumstances the charter should clearly and unambiguously allow referendum on both. I suggest that resolutions having a force and effect exceeding one year should be referable. Also, tax increases greater than 10% in any year should be referable. There is no reason to place either of these situations off limits to the electorate.

Referendum – General Remarks

The electorate is not a threat to be managed and contained, as is implied in attempts to limit citizen participation, and make it more difficult. Our system of government is of, by and for the people, and the right to referendum is a fundamental part of that. The right to referendum should be carefully guarded and subjected only to the most reasonable, responsible and least restrictive limits.

Charter Amendment

This has not been directly addressed by the Charter Review Commission; however the proposal to increase the required number of signatures for referendum to 10% of qualified voters may have been intended to address this. The current limit of 10,000 signatures presents a high hurdle for citizens wishing to make charter changes, and has served to limit such proposals. Modification of the charter should never be undertaken lightly, or for fleeting reasons. But increasing the requirement to 10% of qualified voters, which would presently be 14,680 or 15,787 as noted above, would be unnecessary and unreasonable. The intent of the charter amendment process is to foster reasonable and responsible proposals likely to obtain broad support, not to make it nearly impossible altogether. As with the proposal to increase the number of signatures required for referendum, it is not clear what "problem" is being addressed here. Howard County has no history of citizens making trivial or unjustifiable proposals for charter amendment, and there is no need to make the process more restrictive than it already is.

Recall Elections

The charter does not provide for recall of elected officials. Provisions should be included to allow citizens to initiate the recall and/or removal of any elected or appointed official at any time. I would include Judges in this. Provisions should include reasonable signature requirements, not more than 5000 (a recall is a referendum on an official), and for recall elections involving multiple candidates with none achieving greater than 50% of the votes cast, provisions for runoff election(s) to ensure the final winner has received a majority vote.

County Council – Terms

We presently elect US Representatives to 2 year terms, but local council members to 4 year terms. This results in council members who are largely unaccountable to the electorate, at least in the beginning years of their terms. I believe county council members should be elected at the same time as US Representatives, and for two year

terms, with a limitation of 6 terms total (to comply with the present voter mandated limitation of 12 years maximum in office).

County Council – Size

Our county council does not change in size with the electorate. The US House of Representatives is resized every 10 years to comply with population/electorate changes. Howard County has grown 32% from 1990 to 2000, from 187,328 citizens (1990 Census) to 247,842 citizens (2000 Census), but still has only 5 county council members. Council districts that averaged around 25,000 voters in 1990 average around twice that today, doubling the number of people each council member must represent. This is not acceptable. Consideration should be given to defining council districts as having approximately 30,000 voters, and the number of districts should change to accommodate that.

County Council – Full Time vs Part Time

Given the growth in Howard County, it is unrealistic to continue to pretend that part time legislators can adequately represent the citizenry. That quaint notion is not appropriate today, and certainly not for our future. County council positions should be made full time, with a salary sufficient to attract highly qualified candidates, and comparable to other full time council positions in the Baltimore Washington area.

Taxes

Consideration should be given to requiring a supermajority of the council to approve any tax increase larger than 10% in any given year. As noted above, tax increases greater than 10% in any given year should be referable.

Land Use

Thankfully, no commission member has suggested weakening or deleting Question B 1994, under which the voters established the right to referendum over General Plans and Comprehensive Rezonings. Question B 1994 passed with 67% of the vote, and the commission should continue to respect that.

Consideration should be given to an annual growth cap. The absence of one has been a continual source of problems, and resulted in overcrowded schools, roads, and large tax increases. Mandating moderation in growth through the charter should be a last resort, and we've reached (passed) that point.

Howard County Charter Review Commission

APPROVED MINUTES

Date: Wednesday, September 14, 2011

Time: 7:00 pm.

Place: North Laurel Community Center, Public Hearing

Commission Members in attendance:

☑Donna Richardson
☑Michael Davis
☑Sharon Ahn
Cindy Ardinger
☑Regina Clay
☑Thomas Coale
☑Edward Cochran
Charles Feaga
☑Alice Giles
☑Yvonne Howard
☑Steve Hunt
Sang Oh
☑Andrew Stack
Joshua Tzuker
☑James Walsh

- Ms. Richardson opened the meeting.
- The public was asked to sign in. Ms. Richardson explained that individuals would receive three minutes and individuals speaking for a group would receive 5 minutes
- Ken Stevens testified (provided written comments)
- John Taylor spoke against clarifying that floating zones are not subject to referendum; stated that floating zones are subject to referendum and were intended to be as part of the language of the Charter amendment placed on the ballot; term limits should remain; should add amendment that states that any resident of the county has legal standing in claim against the county; resolutions should be subject to referendum; should have recall elections available
- Stuart Kohn testified (provided written comments)
- Susan Gray testified against changing language regarding zoning legislation that is subject to referendum
- Tom Flynn testified (provided written comments)

Howard County Charter Review Commission

APPROVED MINUTES

Date: Thursday, May 5, 2011

Time: 9:00 a.m.

Place: Columbia Room, George Howard Building

Council Members in attendance:

Donna Richardson
☑Michael Davis
☑Sharon Ahn
☑Cindy Ardinger
☑Regina Clay
☑Thomas Coale
☑Edward Cochran
☑Charles Feaga
☑Alice Giles
☑Yvonne Howard
☑Steve Hunt
☑Sang Oh
☑Andrew Stack
☑Joshua Tzuker
☑James Walsh

- Mr. Davis opened the meeting.
- Members unanimously approved the minutes with date of the next meeting corrected to show May 19th.
- Mr. Davis reviewed the website and reminded members to email Charter Review email address.
    - Ms. Clay clarified that email should not be used if want the email to remain confidential.
- Mr. Vannoy provided an overview of the Charter along with a memorandum.
- Mr. Davis reviewed public process of reviewing and approving amendments to the Charter.
- Mr. Davis asked what the salary currently is for elected officials.
    - Ms. Beach stated the current salaries are $53,400 for Council Members and $161,000 for Executive.

- Mr. Feaga pointed out that there was a 58% increase at one point for the County Council and that they can pay assistants what they want.
    - Pointed out that there is no limit to the amount of increase and suggested that they may be a change.

- Mr. Davis began to review the Charter:
    - Article I
        - No changes recommended.
    - Art. II –
        - Mr. Davis reviewed the composition of the Council.
        - Ms. Giles suggested there might be interest in county-wide positions.
        - Dr. Cochran stated there may be interest in more members and if they should be county-wide; that there is concern that Columbia has more representation than other areas.
        - Ms. Clay asked to clarify the process for the Redistricting Commission.
            - Mr. Vannoy reviewed the process- The commission is basing their recommendations on the current Charter.
        - Mr. Davis would like to know what the fiscal impact would be on increasing the number of council members and making a county-wide member.
        - Mr. Tzuker asked if the Council would need to have more staff if the members are council-wide.
        - Mr. Feaga reviewed the staff that is currently with the Council; used to not have assistants, now they have assistants who do a lot of work and a secretary.
        - Point was made that there was no member that's looking out for the whole county.
        - Dr. Cochran recommended Frank Hecker's blog for history of Charter and County government.
        - Ms. Clay suggested that for qualifications, the council member should reside in the district for 2 years, not just the county.
            - Concern was raised if the member is redistricted out of the district he/she represents.
        - Ms. Clay stated that there may be interest in lowering the age of qualification age to 21; asked what are other jurisdictions age limits.
        - Mr. Coale suggested the Charter include both felony and moral turpitude as possible reasons Council Members forfeit position.
        - Mr. Davis stated that a felony is theft of $500 or more; the Commission should consider when forfeiture becomes automatic.

- Mr. Coale stated that moral turpitude is up to own definition, maybe the Commission should consider making it more specific.
- Mr. Vannoy will research definition and case law on how moral turpitude is defined.
- Ms. Ahn asked if they are indicted, should they be suspended.
    - The Commission members discussed how that would work and raised concern that that would leave a district unrepresented.
- Mr. Coale suggested changing the term limits to 10 years (same recommendation that the last commission recommended).
    - Mr. Feaga provided the history of why the term limit is defined the way it is.
- Mr. Tzuker suggested remove term limits; concern with loss of institutional memory and experience if get all new Council Members at one time.
- Ms. Clay suggested staggering terms.
    - Mr. Vannoy – All state and county elections must be during off presidential year; state constitution requires 4 year terms so can't stagger.
- Mr. Feaga suggested limiting the amount of increase in salary that Council can approve.
- Mr. Davis asked what district is supposed to look like. Office of Law recommended remove "occupation".
- Mr. Tzuker suggested remove description of political distribution; make it harder to have districts drawn on partisan lines.
    - Mr. Coale recommended that Commission compare what other jurisdictions.
- Mr. Davis referred to the provision that provides that all land use bills are subject to referendum; questioned whether it is constitutional.
    - Mr. Feaga stated that it seems like zoning by popular demand.
    - Dr. Cochran stated that seems like a legislative provision, which is contrary to the purpose of the charter.
    - Mr. Vannoy – Paul Johnson from the Office of Law can meet with the Commission to discuss this issue.
- Ms. Clay asked if there should be a separate zoning board from the Council.
    - Dr. Cochran reviewed the history of the zoning board; asked for review of the zoning process.
- Ms. Clay suggested that the County chair be elected county-wide.

Howard County Charter Review Commission

APPROVED MINUTES

Date: Thursday, June 23, 2011

Time: 9:07 a.m.

Place: C. Vernon Gray Conference Room, George Howard Building

Commission Members in attendance:

☑Donna Richardson
☑Michael Davis
☑Sharon Ahn
☑Cindy Ardinger
☑Regina Clay
☑Thomas Coale
☑Edward Cochran
☑Charles Feaga
Alice Giles
☑Yvonne Howard
☑Steve Hunt
Sang Oh
☑Andrew Stack
☑Joshua Tzuker
☑James Walsh

Council Members Courtney Watson Mary Kay Sigaty, and Paul Johnson with the Office of Law were also in attendance.

- Ms. Richardson opened the meeting.
- Members unanimously approved the minutes.
- Ms. Watson spoke with the Commission
    - Provided members with a chart showing the population and Council make-up of each of the charter counties in the state
    - Recommended that the Commission consider look at the information provided and determine whether other council districts are needed; if additional council districts are needed, should they be county wide or should districts be carved out of current districts.
    - There are advantages and disadvantages to each model and the Commission should determine which model works best in the County

- Mr. Feaga asked whether that would give Columbia more voting power
- Ms. Watson pointed out that the school board positions are county-wide and there are no members from Columbia
- Dr. Cochran suggested that it may help the Republican party or areas outside of Columbia because the votes would be concentrated for county-wide positions.
- Mr. Johnson from the Office of Law spoke about section 202(g) declaring any amendment to the General Plan, Zoning Regulations or Zoning Maps a legislative act subject to referendum
- Dr. Cochran asked what the background of the provision was
    - Mr. Johnson stated that there was interest in challenging comprehensive zoning and people thought a referendum may be easier; people were looking to move away from the judicial process that was available
- Dr. Cochran pointed out that the council is doing a lot of ZRA's.
    - Mr. Johnson stated that the Zoning Board process is not being used as much as it was (a Zoning Board decision can be appealed, but an appeal for a ZRA is a referendum)
- Mr. Hunt asked the Council Members present what they thought about changing the requirements for the number of signatures on a referendum
    - Neither Council Member expressed strong opinion for keeping the same or changing it.
- Mr. Walsh noted that neither referendum provision provided for a date of voter registration
- Mr. Davis suggested that the Commission ask the Board of Elections when they come how they interpret the provision regarding registered voters
- Mr. Vannoy said that he will provide information about referendum procedures for other counties
- Commission members reviewed list of possible changes and removed and clarified provisions.
- Meeting Adjourned at 10:30 a.m.

Howard County Charter Review Commission

APPROVED MINUTES

Date: Thursday, October 13, 2011

Time: 9:03 a.m.

Place: C. Vernon Gray Conference Room

Commission Members in attendance:

☑Donna Richardson
☑Michael Davis
☑Sharon Ahn
☑Cindy Ardinger
☑Regina Clay
☑Thomas Coale
☑Edward Cochran
Charles Feaga
☑Alice Giles
☑Yvonne Howard
☑Steve Hunt
☑ Sang Oh
Andrew Stack
☑Joshua Tzuker
☑James Walsh

- Ms. Richardson opened the meeting.
- Minutes were approved unanimously
- Members requested that staff provide summaries of public testimony in the chart of issues
- Members reviewed the chart of issues
    - §202
    - Mr. Coale suggested there was not an overwhelming amount of testimony that suggested that this was an issue or concern
    - Dr. Cochran stated that at large member would allow people more avenues for assistance; an at large position should be recommended
    - Mr. Walsh disagreed with the at-large concept commenting that state legislature and congressional seats are districts; some at-large and some districts will create a two tier legislature and be less efficient

- Mr. Oh suggested the question is whether the County has grown to the point where 7 members are needed; he believes the County has not
- Mr. Tzuker suggested that the Council member concerns about the number of constituents per district could be addressed by increasing the staff; Council member position should remain at part-time to avoid the self selection of only people who can afford to live in the County on Council salary; part-time allows for variety of people
- Ms. Clay suggested that it is not necessarily a concern of the constituents, it is more of a concern by the elected officials that they are stretched
- Mr. Hunt suggested that if the Council feels stretched they should consider more staff, and the commission could suggest that the Council add more staff.
- Mr. Oh suggested that the lack of public comments on the issue may suggest that the constituents do not feel underrepresented.
- Ms. Richardson called the vote on increasing the number of districts
  - Vote was unanimous to not recommend increasing number of districts
- Dr. Cochran suggested that the Commission recommend that the Council establish a commission to study the number of council districts
  - Dr. Cochran moved to recommend in minority report
  - Vote was 5-7 by show of hands, motion failed.
- Ms. Giles stated that the Council may see a rapid increase in population due to BRAC and New Town

- §202(g)
  - Commission voted unanimously to remove from Chart
- §208(h), 209(c), 209(d), 210(b), 604
  - Commission voted unanimously to approve this recommendations
- §209(d)
  - Commission voted unanimously to approve recommendation to change time limit to post emergency legislation from 4 hours to 12 hours
- §209(h)
  - Commission voted unanimously to approve recommendation to extend the life of a bill to 125 days
- §611
  - Commission voted unanimously to approve recommendation to exclude grants from lapsing appropriations
- §906 & 907
  - Commission voted unanimously to approve recommendation to eliminate Charter conflicts with the Maryland Public Information Act
- §202(f)(1)

Howard County Charter Review Commission
Table of Discussion Points Currently Under Consideration
As of August 25, 2011

Code Section	Text	Issue
202	"The legislative power of the County is vested in the County Council of Howard County which shall consist of five members who shall be elected from the Councilmanic Districts."	• Should there be two more council seats? • If so, should they be County-wide or two additional districts?
202(g)	"Any amendment, restatement or revision to the Howard County General Plan, the Howard County Zoning Regulations or Howard County Zoning Maps, other than a reclassification map amendment established under the "change and mistake" principle set out by the Maryland Court of Appeals, is declared to be a legislative act and may be passed only by the Howard County Council by original bill in accordance with the legislative procedure set forth in section 209 of the Howard County Charter. Such an act shall be subject to executive veto and may be petitioned to referendum by the people of the county pursuant to section 211 of the Charter."	• Specify that floating zone applications are not subject to referendum.
208(h) 209(c) 209(d) 210(b) 604	208(h)"(h) Journal. The Council shall provide for the keeping of a Journal which shall be open to the public inspection at all reasonable times." 209(c)" . . . . Within twenty-four hours after the introduction of any bill, a copy thereof and notice of the time and place of the hearing shall be posted by the Administrator of the Council on an official bulletin board to be maintained in a public place by the Council. . ." 209(d)" . . . . The Administrator of the Council shall, within four hours after its introduction [of an emergency bill], post a copy thereof and notice of time and place of the hearing upon an official bulletin board to be maintained by the Council in a public place. . ." Sec. 210(b) *Printing and publication of laws.* The Council shall cause each ordinance, resolution, rule and regulation having the force and effect of law and each amendment to this Charter to be printed promptly following its enactment and they shall receive such publication as may from time to time be required by law. The rules,	• Change or add language: "make available to the public through a readily accessible source," or similar language, to allow Council to use public sources such as the internet, without restricting the sources that can be used.

CARROLL COUNTY CHARTER BOARD

Minutes

July 24, 1997

Call to Order:
Chairman Amedori called to order the Carroll County Charter Board at 7:03 p.m., in Room 157-59, Carroll Community College, Westminster, Maryland.

Present:
Carmen Amedori, Christopher Nevin, Ragen Cherney, Ann Ballard, Lynn Pipher, Neal Powell, Romeo Valianti, and Roger Wolfe. Also present: The Honorable Charles Ecker, Howard County Executive.

Absent:
Jack Gullo, Jr.

Previous Minutes:
Minutes of the previous meeting of July 10, 1997 were read. Mr. Nevin moved the acceptance of both meeting minutes. Mr. Wolfe seconded. Motion passed with a unanimous vote.

Mr. Ecker's Remarks:
Mr. Ecker is a strong believer in home rule. In Maryland there are 10 counties with commissioner form of government, 13 counties with home rule, of those 13, 8 counties have charter government and of those 6 have an elected county executive and county council. Talbot and Wicomico Counties appoint their county executive/administrator. There needs to be a separation of powers, it is good to have an elected leader. With a charter Carroll will have a state transfer of legislative matters on local issues to the county. This allows for more control by the citizens of the county as well as enacting county legislation in a more timely manner. With a charter with an elected executive Carroll will have more effective leadership. Not management by committee like the way commissioner form of government works. We will have a hands on day to day county leader responsible to the citizens of Carroll County. One disadvantage is that charter government will cost more money, we can't really say. There will be support staff for the council and the executive, however, it should be noted that

many of these positions already exist in Carroll County government. With a charter Carroll would not need any additional government personnel other than those already mentioned as support staff for the council and executive. There might be an additional need in the county attorney's office for personnel. Carroll can state the way Howard County does that the county attorney's office works for both the council and the executive or the charter could allow for additional personnel in the county attorney's office to work for the executive and personnel to work for the council.

The Howard County Council until 1986 was elected county-wide, but after a referendum by the voters the council has been elected by district since. Howard County has a limit of two terms for the executive and fairly recently enacted three term limits for council members. After each decennial census the county deals with re-districting. Mr. Ecker urged the Charter Board to place a re-districting plan in the charter. In Howard County a commission of three Democrats and three Republicans are appointed to prepare and submit a re-districting plan.

In Howard County once the budget is passed by the council the executive cannot veto the budget bill. Once it is sent to the council, however, they cannot increase the budget sent by the executive. The executive can veto any other legislation passed by the council. The council can over-ride the veto by the vote of four of the five council members. In Howard County there is a Chief Administrative Officer similar to the position of Chief of Staff to the County Commissioners which is paid $85,000 per year in Howard County. When the executive is out of the county they are the acting executive. The county council is paid between $30,000 to $33,000 per year and there is a salary review commission for both the executive and council salaries. There are length of residency requirements for the executive and the council.

In Howard County the council sits also as the County Liquor Board and as the County Planning and Zoning Commission.

Howard County's property tax rate is $2.59/$100.00, and they have a metro fire tax of $0.23/$100.00. Their piggy back tax is 50% and they also have a trash tax. The County also has a paid county police department, county paid fire services with some volunteer services, and has paid emergency services.

There is a charter review commission appointed periodically and they place changes to the charter on the ballot for referendum. Mr. Ecker stated that he see's charter government as a cost benefit. The citizens get better and more services. In his term of office Mr. Ecker stated that the size of the executive's staff and the council's staff has decreased. Under questioning Mr. Ecker stated that the executive in Howard County has no veto power with zoning issues, that the council appoints a Board of Zoning Appeals which can re-hear the entire case from the Zoning Commission, and that when the council acts as either the Zoning Commission or as the Liquor Board they are paid additionally per meeting.

CARROLL COUNTY CHARTER BOARD

Minutes

November 20, 1997

Call to Order:
Vice Chairman Nevin called to order the Carroll County Charter Board at 7:09 p.m., In Room A125, Carroll Community College, Westminster, Maryland.

Present:
Carmen Amedori, Christopher Nevin, Ragen Cherney, Ann Ballard, Jack Gullo, Jr., Lynn Pipher, Romeo Valianti and Roger Wolfe.

Absent:
Neil Powell.

Previous Minutes:
Mr. Pipher moved the acceptance of the November 6, 1997 minutes, Ms. Ballard seconded. Motion passed with a unanimous vote.

Board of Appeals:
Mr. Gullo briefed the Board on Maryland law regarding this area of the law from *The Annotated Code of Maryland*, Article 25A, Section 5.

Composition:
Mr. Pipher moved that there be a Board of Appeals composed of five members appointed by the county executive and confirmed by the county council, with one member from each councilmanic district, and one at-large alternate member (similar make-up to the planning & zoning commission). Mr. Nevin seconded. Motion passed with a unanimous vote, 7 yes (Nevin, Cherney, Ballard, Gullo, Pipher, Valianti & Wolfe), 0 nays, 1 abstention (Amedori). Ms. Amedori stated that she wanted the record to reflect that she abstained due to arriving late and missing most of the debate on this topic.

Removal:
Mr. Nevin moved that the process be the same as approved for the planning and zoning commission. Mr. Gullo seconded. Motion passed with a unanimous vote (8-0).

Powers and Functions:
Mr. Gullo moved to adopt language similar to Article V, Section 501 (b) from the Howard County

Charter in regard to the Board of Appeals. Ms. Ballard seconded. Motion passed with a unanimous vote.

Terms:
Mr. Gullo moved for three year terms, not to be staggered and be coterminous with no term limits on service on the Board. Mr. Pipher seconded. Motion passed with a unanimous vote (8-0).

Rules of Practice and Procedure:
Mr. Gullo moved to adopt the language from the Howard County Charter Article V, Section 501 (c) but to remove filing fees in the wording of the section and to leave this to the county in implied powers to enact. Mr. Pipher seconded. Motion passed with a unanimous vote (8-0).

Appeals from Decisions of the Board:
Mr. Gullo moved to adopt language from the Howard County Charter Article V, Section 501 (d) and to change the necessary language to refer to Carroll County and limit the appeals to 30 days. Mr. Valianti seconded. Motion passed with a unanimous vote.

Employees of the Board:
Mr. Nevin moved to adopt similar language from the 1992 proposed Carroll County Charter in Subsection E on pages 78-92, starting on line 2025 amending that the county executive shall provide the sufficient support of the Board. Mr. Cherney seconded. Motion passed with a unanimous vote (8-0).

Implementing Legislation:
Mr. Nevin moved to adopt language similar to the Howard County Charter, Article V, Section 501(c), the first and last sentences to be adopted only. Ms. Ballard seconded. Motion passed with a unanimous vote.

General Provisions:
Mr. Valianti moved to adopt the language from the 1992 proposed Carroll County Charter, Article VI, Section 1 for an Ethics Board, to consist of five members to be appointed by the county executive with confirmation by the county council by district, and to strike the last sentence thereby making this Board a non-partisan panel. Mr. Cherney seconded. Motion passed with a unanimous vote (8-0).

Mr. Gullo moved to adopt similar language from the Howard County Charter Article IX, Sections 904-913, regarding constructions of powers, additional compensation prohibited, copies of data, inspection of data, bonding of officers, county seal and flag, subpoena power, custody of papers and records (eliminating language on the first legislative session, and including both the executive and the council), separability, citation, definitions and rules of construction. Making all language to refer to Carroll County. Mr. Pipher seconded. Motion passed with a unanimous vote.

Next Meeting:
The next meeting of the Charter Board will be on Thursday, December 4, 1997 at 7:00 p.m., at the Carroll Community College. Mr. Nevin and Mr. Gullo will have the first drafts of the charter available at this meeting. Mr. Cherney announced that he will be unable to attend this meeting.

Adjournment:
Mr. Wolfe moved to adjourn, Mr. Pipher seconded. Motion passed with a unanimous vote (8-0). The Board adjourned at 9:15 p.m.

ARTICLE II. THE LEGISLATIVE BRANCH

SECTION 201. Composition.

The legislative branch of the County government shall consist of the County Council and the officers and employees thereof.

SECTION 202. The County Council.

For purposes of electing Council members, the County is divided into five geographic districts, the boundaries of which shall be established pursuant to this Charter. The legislative power of the County is vested in the County Council of Carroll County which shall consist of five members who shall be elected from the five Council Districts.

(a) Mode of election. Each of the members of the Council shall be nominated and elected by the qualified voters of the Council District in which he or she resides. Each Council District shall elect one Council member. Vacancies shall be filled pursuant to Section 202(f) of this Charter.

(b) Qualifications.

1. General. Each candidate for the council shall have resided in the County for a period of not less than one year immediately prior to their election or appointment; shall be a registered voter of Carroll County; and shall be a resident of the Council District which the candidate seeks to represent at the time of filing for candidacy and during the full term of office; and shall not be less than twenty-one years of age at the time of election.

2. Other Offices or Employment. During their term of office, a Council member shall not hold any other elected or appointed public office in federal, state, county or municipal government, or any office or employment in Carroll County government, including Carroll County Public School employees. They shall not, during the whole term for which they were elected or appointed, be eligible for appointment to any county office or position carrying compensation.

3. Forfeiture of Office. If a member of the Council ceases to be a qualified and registered voter of the County, moves his or her residence from the Council District he or she was elected to represent, accepts any other office under federal, state, county or municipal government, becomes employed by the County or any other entity which receives funds through the County budget, upon adjudication of mental incompetence or upon a Circuit Court finding of gross dereliction of duty upon the petition of not less than four Council members, he or she shall immediately forfeit his or her office.

(c) Term of office. Members of the Council shall qualify for office on the first Monday in December following their election, or as soon thereafter as practicable and shall enter upon the duties of their office immediately upon their qualification. They shall hold office for a term of four years commencing at the time of their qualification and continuing until their successors shall qualify. Section 202(c) shall not apply to vacancies as described in Section 202(f).

(d) Compensation and allowances. Each member of the Council shall receive as compensation and allowances for the performance of public duties under this Charter the sum of not less than Fifteen Thousand Dollars ($15,000.00) per year and shall not accrue annual leave or be entitled to participate in the county pension plan. The compensation and allowances shall be in full compensation for all services required by this Charter to be performed by the members of the Council, but shall not preclude reasonable and necessary expenses as may be provided in the budget. However, no county funds shall be appropriated for renting, staffing or supplying a Council member with a district office.

(e) Compensation Review Commission. The County Council shall establish a Compensation Review Commission comprised of five County residents. Members of the Council and officers and employees of the County Government shall not be eligible for appointment. The members of the Commission shall serve without compensation but may be reimbursed for expenses incurred in carrying out their responsibilities. This Commission shall review the salaries of the County Executive and Council. By February 1 of each year in which the Council is to be elected, the Commission by formal resolution shall submit its determinations for compensation to the Council. The Council shall accept, reduce or reject, but shall not increase any item in the resolution. Any change in compensation shall take effect at the beginning of the term of office of the next Council. Should the Commission's determination be rejected, the compensation shall remain at the same amount. Rates of compensation shall be uniform for all members of the Council, except that the officers of the Council may receive higher compensation as recommended by the Commission. In no event shall such compensation be reduced by a figure lower than that provided in this Charter except by amendment thereto.

(f) Vacancies. A vacancy shall occur upon the death, resignation, disqualification or removal from office of a Council member. A vacancy occurring in the office of a Council member prior to the expiration of his or her term shall be filled by the Council within thirty days after the vacancy occurs by the appointment of a person whose name is to be submitted in writing to the Council by the State Central Committee of Carroll County representing the political party to which the previous member belonged at the time of the member's most recent election. If a name is not submitted by the appropriate State Central Committee within twenty-five days after the vacancy occurs or if the previous incumbent was not a member of a political party at the time of the member's most recent election, then the vacancy shall be filled by a majority vote of the remaining members of the Council. The member so appointed shall reside in the same Council District as his or her predecessor and shall possess and maintain the same qualifications as an elected Council member. The member so appointed shall serve the unexpired term of his or her predecessor.

(g) Redistricting.

The boundaries of the Council Districts shall be reestablished in 2002 and every tenth year thereafter. Whenever district boundaries are to be reestablished the Council shall appoint, not later than February 1 of the year prior to the year in which redistricting is to be effective, a Commission on Redistricting, composed of three members from each political party. The Commission shall be chosen from a list of five names submitted by the central committee of each political party which polled at least fifteen percent of the total vote cast for all Council candidates in the preceding

regular election. The Council shall appoint one additional member to the Commission, who may be from any political party, without reference to any list submitted by a central committee. The Commission shall, at its first meeting, select one of its members to serve as chairperson. No person who holds any elected public office shall be eligible for appointment to the Commission.

By November 15 of the year prior to the year in which redistricting is to be effective, the Commission shall prepare a plan of Council Districts and shall present that plan, together with a report explaining it, to the Council. The proposed districts shall be compact, contiguous, substantially equal in population and have a common interest as a result of geography or existing political boundaries. Within thirty days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within ninety days following presentation of the Commission's plan no other law reestablishing the boundaries of the Council Districts has been enacted, then the plan as submitted shall be adopted by the Council. Any ordinance establishing Council Districts shall be exempt from referendum.

(h) Planning and zoning. Any amendment, restatement or revision to the Carroll County Master Plan, the Carroll County Zoning Regulations or Carroll County Zoning Maps, other than a reclassification map amendment established under the "change and/or mistake" principle set out by the Maryland Court of Appeals, must be adopted by the Council as law.

SECTION 203. Officers.

(a) Presiding officer. The Council at its first meeting in December of each year shall elect from its membership a President and Vice President. The President, or in his or her absence the Vice President, shall preside at all meetings. On all questions before the Council, the President and Vice President shall have and may exercise the vote to which each is entitled as a Council member.

(b) Other officers and duties. The Council shall employ a Secretary, who shall keep minutes of all meetings and maintain its Journal. There may be such other officers of the Council as may be provided in its Rules of Procedure. Officers of the Council shall perform duties and functions not inconsistent with those assigned to the legislative branch by this Charter or the Rules of Procedure of the Council.

SECTION 204. Actions by Council as Whole.

In all of its legislative functions and deliberations, the Council shall act as a body and has no power to delegate any of its functions and duties to a smaller number of its members than the whole.

SECTION 205. Enumerated powers not to be exclusive.

The enumeration of powers in this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein, implied thereby, or appropriate to the exercise thereof, the Council shall have and may exercise all legislative powers which, under the Constitution and laws of this State, it would be competent for this Charter specifically to enumerate.

Members

Ken Coffey
Chairman

Bob Kresslein
Vice Chairman

Debra Borden
Secretary

Fred Anderson

Joan Aquilino

Dr. Tom Browning

Jeff Holtzinger

Mayor James Hoover

Rocky Mackintosh

Alternate Members

Doug Browning

Dana French

Earl Robbins

CHARTER BOARD
OF FREDERICK COUNTY, MARYLAND

E-mail: CharterBoard@FrederickCountyMD.gov
Website: www.FrederickCountyMD.gov/Charter

Thursday, September 1, 2011
7:00 PM
Winchester Hall

AGENDA

I. Welcome, Pledge of Allegiance and Opening Remarks – Ken Coffey, Chairman

II. Frederick County Greeting and Welcome of Harford County Executive David Craig and Howard County Executive Ken Ulman – Commissioner President Blaine Young

III. Local Government Presentations – The Honorable David R. Craig, Harford County Executive & The Honorable Ken Ulman, Howard County Executive

IV. Approval of Meeting Minutes

V. Discussion and Update on Outreach Meetings and Staffing for the Frederick County Chamber of Commerce Business Expo 2011 – Rocky Mackintosh, Outreach Chairman

VI. Discussion and Action on Charter Consultant – Ken Coffey, Chairman

VII. Public Comment

VIII. Adjournment

Next Charter Board Meeting will be held on Thursday, October 6, 2011, at 7:00 PM.

Jan H. Gardner
County Executive

FREDERICK COUNTY GOVERNMENT

OFFICE OF THE COUNTY ATTORNEY

John S. Mathias, County Attorney
Michael J. Chomel, Senior Assistant County Attorney
Linda B. Thall, Senior Assistant County Attorney
Wendy S. Kearney, Senior Assistant County Attorney
Kathy L. Mitchell, Assistant County Attorney
Bryon C. Black, Assistant County Attorney

MEMO

To: County Council Members

From: Wendy S. Kearney, Sr. Asst. County Attorney

Date: January 30, 2019

Re: **Rezoning Hearing Procedures**

I. Purpose:

The purpose of this memorandum is to provide information and guidance to Council Members about the law governing rezoning hearings and decisions and to provide the adopted "County Council Rezoning Public Hearing Procedures."

II. General Discussion:

1. Quasi- Judicial Decisions

Decisions made on individual rezoning applications are categorized as "quasi-judicial" decisions.

The Council, as the decision maker, will be provided the statutory framework from the County Code that sets forth the criteria to be applied by the Council. The application and record must contain sufficient factual information to establish that those criteria have been met for the Council to make the required findings to support the decision to approve the rezoning request.

The applicant bears the burden to prove all the elements needed to satisfy the criteria. If the applicant meets the burden of proof, the Council may, but is not required to approve the rezoning request.

If a majority of the Council Members agree that the criteria have been satisfied and to grant the request, an affirmative vote provides direction to staff to prepare the appropriate documentation for signature. The documentation that results from the Council's decision is categorized as "legislation." If the Council approves the rezoning request, an Ordinance is prepared which operates to change the previously established zoning designation applied to the subject property. If a majority of the Council members are not able to find that the criteria has been satisfied or

decide not to approve the request, a Resolution is prepared to reflect the non- approval, and the zoning designation remains unchanged.

The rezoning application is deemed denied if not approved within 90 days of the conclusion of the Council's public hearing.

If the rezoning request is approved, after the Council adopts the Ordinance, the Ordinance is forwarded to the County Executive for approval or veto.

2. The Record:

All quasi-judicial[1] decisions must be based upon the information contained in the administrative "record." Typically the "record" is opened with the application, to which the staff report and agency comments are added. As the application moves through the process, the Planning Commission recommendation is added to the record, along with all documents submitted by the public or others as part of the Planning Commission hearing.

The record remains open when the County Council Hearing commences, for the receipt of additional documents and comments. At the conclusion of the Council hearing(s) the Council should close the record and no additional information can be considered or added.

All Council Members must base their decision(s) on the information contained in the "record" and may not consider any information "outside" of the record.

If a Council Member determines that the information presented to the Council and included in the record is not sufficient to make each of the affirmative finding(s) required by the applicable code provisions, the Council Member would not be able to vote to approve the application.

3. Decision Maker's Role:

In making a quasi-judicial decision, a Council Member's role is like that of a Judge. The application and pertinent information is presented to the Council along with the criteria to be applied. The decision must be based only on the information provided in the "record." Council members may ask questions of presenters during the hearing to obtain additional information. As

[1] Quasi-judicial decision include rezonings (piecemeal and floating zones (PUD and MXD)), and Historic Property and Historic District Designations.

a decision maker, a Council Member may **not** engage in their own research or base their decision on information outside of the record.

If a Council Member has questions or can identify items that they would like to review and have included in the record, during the public hearing the Council Member may ask the Staff members who presented the Staff Report to provide that information, have that information added into the record and made available to all participants prior to the closing of the record.[2]

4. "Off the Record" and Ex-Parte Communications.

As indicated above, it is crucial that any decision on an application be based solely upon the information contained in the record.

Therefore, communications with anyone about any matter related to a pending application other than during the public hearing, should be avoided for several reasons. Not only will it be difficult to segregate "non-record" information from information in the record when making the decision, but it also creates the appearance of impropriety for a decision maker to have private discussions with the applicant or someone in opposition to an application. Such communications may also provide the basis for a legal challenge of the Council's decision.

In addition, the Ethics provisions contained in the Annotated Code of Md., General Provisions Art., §5-857 requires, among other things, disclosure of all communications regarding a pending application.[3]

III. Hearing Procedures:

Prior to making a decision on an application, the Council is required to hold a public hearing during which all parties must be treated fairly and afforded due process rights, including (but not limited to) the right to present testimony and to cross examine witnesses.

The Court of Appeals recently provided guidance on the amount of cross-examination an agency must allow in the context of zoning matters. The Court indicated that the reasonable cross-

[2] Depending upon the scope of the additional information to be added to the record, an additional hearing may be warranted.

[3] General Provisions Art. § 5-857 applies to Comprehensive and piecemeal rezonings, Water and Sewerage Plan Amendments, Annexations, and Agricultural Preservation applications. It also requires recusal if a contribution was received from the applicant during the pendency of an application.

examination requirements would be satisfied "if one or more representatives of the views of other opponents is permitted full cross-examination. The opponent's right to due process in such context does not mean that every single person present has the right to cross examine." *Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588 (2014).

The Court further explained that "once reasonable cross-examination has occurred, it is the burden of the persons seeking *additional* cross-examination to show that their questions would be meaningfully different, although they *must be given reasonable opportunity to do so." Chesapeake Bay Foundation, Inc.,* Id. (emphasis in original.)

IV. Conclusion:

The Council adopted formal public hearing procedures on February 14, 2017, which are attached.

Adopted: 02/14/17

County Council Rezoning Public Hearing Procedures

Rezoning Hearings – In order to conduct public hearings on rezoning cases in accordance with Section 1-19-3.110 et seq. of the County Zoning Ordinance and Maryland law, the following procedures will be followed.

a) As required by the Zoning Ordinance, a public hearing will be held on all rezoning applications. All review and discussion of rezoning cases shall take place in a public meeting or workshop. The order in which multiple cases will be heard shall be determined by the Council President prior to the meeting.

b) The staff report, reviewing agency comments, applicant testimony and public comments will be presented to the Council during the public hearing.

c) The date and time of the public hearing will be published in a local newspaper no less than 14 days in advance of the hearings. The order for presentations and time limits for testimony shall be as follows:

- Staff report & reviewing agency comments.
- Applicant or the Applicant's agent(s) or attorney(s) (30 minutes).
- Public comment (3 minutes per individual or 10 minutes per recognized organization).[1]
- Applicant's rebuttal (5 minutes).

d) Additional time for the Applicant's presentation or rebuttal or for public comment may be requested in writing at least 72 hours in advance of the hearing. The decisions on whether to grant the additional time shall be made by the Council President.

e) Additional time for the Applicant's presentation or rebuttal or for public comment may be requested at the beginning of or during the hearing. The decisions on whether to grant the additional time shall be determined by a vote of the Council.

f) Lengthy written comments should be sent to the Council's Chief of Staff by hand delivery, overnight service, mail, fax or electronic mail at least 3 business days in advance of the Council public hearing to ensure they are available to and considered by the Council and included in the record.

g) The Council will base its findings and decision on the record. The record will include the application, staff report, testimony presented during the public hearing and written comments presented at the hearing or received in accordance with (e) above, and items submitted prior to the closing of the record.

[1] "Recognized Organization" shall mean any group that has provided to the Council all of the following: (a) a copy of its bylaws, which must be adopted at least 30 days prior to the Council public hearing, and (b) an executed written resolution from the board of directors (or similar governing body) authorizing the individual to speak on behalf of the organization.

The Council may postpone or continue any hearing due to lack of a quorum, for further study, or to receive additional requested information, to a time and date as determined by the Council.

A Council Member may request additional relevant information from the applicant or County Staff in any format, including but not limited to, maps, charts, reports, and studies, in order to assist it in reaching a decision. All additional information received shall be made available to the applicant and members of the public and will become part of the record.

Cross-Examination - Reasonable cross-examination of witnesses will be permitted at a time and in a manner allowed by law and considered reasonable by the Council President or Chairperson based upon the circumstances of the pending case.

a) Cross-examination is intended to permit a full and true disclosure of relevant facts of the case, with due regard for the circumstances of each particular case, the nature of the proceedings, and the character of the rights which may be affected by it. The Council shall allow cross-examination, in a manner best calculated to afford all parties an opportunity to present their positions and to serve the ends of justice and fairness.

b) The right to cross-examine witnesses shall be extended to those persons who become parties to the proceedings before the Council or who have a cognizable interest in the outcome of the proceedings as determined by the Council President or Chairperson.

c) A person or party wishing to cross examine a witness or panel of witnesses shall make the request known prior to or immediately after the time that the witness or panel of witnesses has concluded their testimony; the failure to make such a timely request shall be deemed a waiver of the right to cross examine.

d) Cross-examination will be: (i) brief; (ii) in the form of a question; and (iii) relevant to the testimony given by the witness. The questions must not: (i) be argumentative; (ii) be preceded or followed by a speech or testimony; or (iii) discuss personality or motives.

e) The rules of evidence applicable to administrative proceedings as determined by the Courts of Maryland shall apply generally. The scope of cross-examination may be limited by the Council President or Chairperson, so as to limit cumulative, repetitive or irrelevant questions.

The Council may vary any of these meeting procedures by a majority vote of members present and voting, except those items required by law.

THE EFFECTIVE DATE OF THIS ORDINANCE IS March 14, 2018

ORDINANCE NO. 18-02-002

ORDINANCE
OF
THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND

RE: BALLENGER RUN PUD
REZONING CASE R-05-09(B)

OPINION/FINDINGS

I. HISTORY

The Ballenger Run PUD was initially rezoned (Case No. R-05-09) to PUD in 2006 (Ordinance No. 06-33-429 effective September 28, 2006) and was approved for 970 dwellings and conditioned to be age-restricted. This case included conditions to construct the main Ballenger Creek Trail and the spur trail to the north but did not include any timing thresholds, which were to be determined at the Phase II review.

In 2013 the Ballenger Run PUD amended its Phase I Plan (Case No. R-05-09(A), Ordinance No. 13-20-648, effective October 17, 2013) with the following revisions:

- Reduced the total approved dwelling units from 970 to 855 dwelling units. This total includes 655 all age dwellings and 200 dwellings units that may be age-restricted dwellings or an assisted living/CCRC use with the same number of equivalent beds.
- Removed the age restriction condition.
- Included a 13-acre elementary school site.

- Added building permit thresholds for the construction of the trails.

The PUD received Phase II approval (preliminary subdivision/site plan) for the first section of 443 lots in 2014. This first section included 207 single-family lots and 236 townhouses. The remaining part of the development will include 212 multi-family units, which will still need to go through a site plan review.

The current PUD application proposes revisions to two conditions of approval from Case No. R-05-09(A) effective October 17, 2013 per Ordinance No. 13-20-648. The request proposes to amend the conditions that require the construction of the Ballenger Creek Trail and a spur trail by specific building permit issuance thresholds.

The Frederick County Planning Commission considered this request in a public hearing on October 11, 2017 and recommended approval of the application.

The County Council of Frederick County, Maryland, considered the request in a public hearing on December 5, 2017 and unanimously approved the application.

Based upon all of the evidence submitted in this case, the County Council makes the following specific findings of fact on each of the items below as identified in the Ann. Code of Md., Land Use Article §4-204(b) and included in Chapter 1-19 of the County Code:

II. PROPOSED DEVELOPMENT

A. Concept Plan

There are no changes proposed in the current Phase I Concept Plan.

B. Phasing Plan

The Phase I Plan amendment in 2013 did not include any detail other than to indicate that the development would be built out over an approximately 12-year period. The Letter of Understanding (LOU) does include building permit and lot recordation thresholds relative to various road improvement requirements.

C. Land Use Proposal

The mix of land uses approved in 2013 is not proposed to change. There are no proposed changes to the land use, design, or density of the current Phase I Plan.

D. Consistency with the County Comprehensive Plan

The 2010 County Comprehensive Plan, as amended in 2012, does not specify trail locations or the schedule for their construction. The Plan supports the development of trails and opportunities for pedestrian and bicycle access to schools, parks, and employment areas.

The proposed revisions to the conditions are consistent with the Comprehensive Plan as they only shift the schedule for construction of the trails.

E. Compatibility with Adjoining Zoning and Land Uses

The proposed condition amendments will not affect the compatibility of the proposed development with any adjoining uses or zoning.

F. Availability of Public Facilities and Services

This proposed amendment to the conditions will not have any impacts on either existing or planned public facilities or services, except for the timing of construction of the Ballenger Creek Trail.

The Letter of Understanding (LOU), executed on October 17, 2013, does include building permit and lot recordation thresholds relative to various road improvement requirements.

§ 1-19-3.110.4 (A) – Approval Criteria for Zoning Map Amendments

*(1) **Consistency with the comprehensive plan;***

Staff finds that the proposed amendment to the conditions to shift the timing of the trail construction is still consistent with the Comprehensive Plan.

*(2) **Availability of public facilities;***

The proposed condition amendments will not affect the adequacy of public facilities.

*(3) **Adequacy of existing and future transportation systems;***

The proposed condition amendments will not affect existing and future road networks. The trails will provide a significant link within the Ballenger Creek community.

*(4) **Compatibility with existing and proposed development;***

The proposed amendments to the conditions will not affect the compatibility with surrounding development.

*(5) **Population change; and***

There will not be any population change as a result of this proposed amendments to the conditions.

*(6) **The timing of development and facilities.***

The proposed amendments to the conditions will move back the timing of the construction of the trails. This shift in timing will not adversely affect ability for the trails to serve the development.

§ 1-19-10.500.3. – Approval Criteria for Planned Development Districts

*(A) **The proposed development is compact, employing design principles that result in efficient consumption of land, efficient extension of public***

infrastructure, and efficient provision of public facilities;

The proposed amendments to the conditions do not propose any changes in the design of the development.

*(B) **The proposed development design and building siting are in accordance with the County Comprehensive Plan, and any applicable community and corridor plans;***

The proposed amendments to the conditions do not propose any changes in the design of the development.

*(C) **The proposed development is compatible with existing or anticipated surrounding land uses with regard to size, building scale, intensity, setbacks, and landscaping, or the proposal provides for mitigation of differences in appearance or scale through such means as setbacks, screening, landscaping; or other design features in accordance with the County Comprehensive Plan, and any applicable community or corridor plans;***

The proposed amendments to the conditions will not affect compatibility of the development with adjoining land uses.

*(D) **The proposed development provides a safe and efficient arrangement of land use, buildings, infrastructure, and transportation circulation systems. Factors to be evaluated include: connections between existing and proposed community development patterns, extension of the street network; pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;***

The proposed amendments to the conditions do not propose any changes in the design of the development.

*(E) **The transportation system is or will be made adequate to serve the proposed development in addition to existing uses in the area. Factors to be evaluated include: roadway capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts, projected construction schedule of planned improvements, pedestrian safety, and travel demand modeling;***

The proposed amendments to the conditions will not affect the road network adequacy. The trails will still be constructed to support the larger pedestrian/bicycle connections in the community.

*(F) **The proposed development provides design and building placement that optimizes walking, biking, and use of public transit. Factors to be evaluated***

include: extension of the street network; existing and proposed community development patterns; and pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;

The proposed amendments to the conditions will only shift the construction of the trails relative to the development of the PUD. The trails will still be constructed to complete the connections of the Ballenger Creek Trail.

(G) ***Existing fire and emergency medical service facilities are or will be made adequate to serve the increased demand from the proposed development in addition to existing uses in the area. Factors to be evaluated include: response time, projected schedule of providing planned improvements, bridges, roads, and nature and type of available response apparatus;***

The proposed amendments to the conditions will not affect the availability of public services.

(H) ***Natural features of the site have been adequately considered and utilized in the design of the proposed development. Factors to be evaluated include: the relationship of existing natural features to man-made features both on-site and in the immediate vicinity, natural features connectivity, energy efficient site design, use of environmental site design or low impact development techniques in accordance with Chapter 1-15.2 of the Frederick County Code;***

The proposed amendments to the conditions will not affect natural features within the development.

(I) ***The proposed mixture of land uses is consistent with the purpose and intent of the underlying County Comprehensive Plan land use designation(s), and any applicable community or corridor plans;***

The proposed amendments to the conditions will not change the approved mix of land uses for the PUD.

(J) ***Planned developments shall be served adequately by public facilities and services. Additionally, increased demand for public facilities, services, and utilities created by the proposed development (including without limitation water, sewer, transportation, parks and recreation, schools, fire and emergency services, libraries, and law enforcement) shall be evaluated as adequate or to be made adequate within established county standards.***

The proposed amendments to the conditions will not affect the availability of public services.

The County Council determined, based upon the evidence in the record that it is appropriate to grant the request.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, the request to amend conditions 4 and 5 of Ordinance No. 13-20-648 for the Ballenger Run PUD, as follows:

4) Prior to issuance of the 500th building permit (or equivalent dwelling unit), the Applicant shall construct the Ballenger Creek Trail from the Kingsbrook development to Ballenger Creek Pike. The Applicant shall accommodate a safe crossing to bring the trail across Ballenger Creek Pike in a location acceptable the Department of Parks and Recreation. The alignment and design of the trail shall be coordinated with the Division of Parks and Recreation.

5) Prior to issuance of the 600th building permit (or equivalent dwelling unit), the Applicant shall construct an 8-foot wide multi-use asphalt trail from the northern property line following Pike Branch to connect to the Ballenger Creek Linear Park trail and shall establish and record a +/- 16-foot wide, perpetual public access easement over this trail to Frederick County. This trail shall be constructed to meet requirements contained in the Frederick County Bikeway and Trails Design Standards and Planning Guidelines.

is granted subject to the following conditions:

1. The amendments to the conditions meet the criteria as set forth in § 1-19-3.110.4; and

2. The amendments to the conditions adequately addresses the Planned

Development District Approval Criteria as set forth in § 1-19-10.500.3.

AND BE IT FURTHER ENACTED AND ORDAINED, that the Zoning Administrator is hereby authorized and directed to make the appropriate changes to the PUD Phase I Plan as reflected in this decision.

The undersigned hereby certify that this Ordinance was approved and adopted on the 14th day of March, 2018.

ATTEST:

Ragen L. Cherney
Council Chief of Staff

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

By: _____
Bud Otis, President

_____
M. C. Keegan-Ayer, Vice President

MJC 3/9/18

_____
Tony Chmelik, Council Member

_____
Kirby Delauter, Council Member

_____
Jerry Donald, Council Member

_____
Jessica Fitzwater, Council Member

_____
Billy Shreve, Council Member

Received by the County Executive on March 15, 2018.

County Executive Action: ✓ Approved _____ Vetoed

Jan H. Gardner 3-15-18

Jan H. Gardner, County Executive
Frederick County, Maryland

Date

LEGISLATIVE SESSION

The Council adjourned into Legislative Session.

INTRODUCTION

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND PURSUANT TO CHAPTER 155, ENTITLED ZONING SECTION 155-B OF THE DORCHESTER COUNTY CODE REZONING A PARCEL OF LAND OWNED BY THREESOME AUTO SALVAGE, LLC LOCATED ON THE EAST SIDE OF CORDTOWN ROAD, CONTAINING 21.81 ACRES OF LAND, MORE OR LESS, IN THE BUCKTOWN ELECTION DISTRICT OF DORCHESTER COUNTY,

MARYLAND AND BEING DORCHESTER COUNTY TAX MAP 42, GRID 16, PARCEL 315, TAX ACCOUNT NO. 13-000301, DESCRIBED IN DEED DATED MAY 11, 2018 AND RECORDED AMONG THE LAND RECORDS OF DORCHESTER COUNTY, MARYLAND IN LIBER 1560, FOLIO 88, FROM AN AGRICULTURAL CONSERVATION DISTRICT (AC) TO A HEAVY INDUSTRIAL DISTRICT (I-Z).

E. Thomas Merryweather, County Attorney, said this bill which rezones 21.81 acres of land on Cordtown Road from Agricultural Conservation District (AC) to a Heavy Industrial District (I-Z). The Council agreed to proceed with publication of a public hearing.

REGULAR SESSION

PUBLIC HEARING

BILL NO. 2020-12 AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND PURSUANT TO CHAPTER 155, ENTITLED ZONING SECTION 155-B OF THE DORCHESTER COUNTY CODE REZONING A PARCEL OF LAND OWNED BY THREESOME AUTO SALVAGE, LLC LOCATED ON THE EAST SIDE OF CORDTOWN ROAD, CONTAINING 21.81 ACRES OF LAND, MORE OR LESS, IN THE BUCKTOWN ELECTION DISTRICT OF DORCHESTER COUNTY, MARYLAND AND BEING DORCHESTER COUNTY TAX MAP 42, GRID 16, PARCEL 315, TAX ACCOUNT NO. 13-000301, DESCRIBED IN DEED DATED MAY 11, 2018 AND RECORDED AMONG THE LAND RECORDS OF DORCHESTER COUNTY, MARYLAND IN LIBER 1560, FOLIO 88, FROM AN AGRICULTURAL CONSERVATION DISTRICT (AC) TO A HEAVY INDUSTRIAL DISTRICT (I-2).

E. Thomas Merryweather, County Attorney, said a legislative public hearing is being held on a bill to rezone a parcel of land owned by Threesome Auto Salvage, LLC located on the east side of Cordtown Road, containing 21.81 acres of land, more or less, in the Bucktown Election District of Dorchester County, Maryland from an Agricultural Conservation district (AC) to a Heavy Industrial District (I-2). He said the first fact witness is Herve Hamon, Planning and Zoning Director. Mr. Hamon advised that: 1) the 21.821 parcel is adjacent to another I-2 parcel; 2) the Planning Commission heard the matter on September 2, 2020; and 3) there was no opposition to the rezoning September 2nd meeting. He provided a summary of the Planning Commission's Findings of Fact and listed the conclusion points as follows: 1) there will no change to the population, 2) there will be no increase in water or sewer use; 3) there will be minimal impact on traffic and transportation; and, 4) it is compatible with existing and proposed development as well as the 2020 Comprehensive Plan. In response to a question from Mr. Merryweather, Mr. Hamon said the Planning Commission found that there is substantial change in the neighborhood which warrants the request. He noted that the property will be used for auto salvage and storage.

Michael Dodd, Esquire, representing Threesome Auto Salvage, LLC, presented his client's case. He placed his narrative in the record.

The Council agreed to move forward and acknowledged that: 1) Mr. Merryweather will prepare the Council's Finding of Facts; and, 2) the passage of the bill will be considered at a future meeting.

PUBLIC HEARING

LIBER0007 FOLIO457

COUNTY COUNCIL

OF

DORCHESTER COUNTY, MARYLAND

2021 Legislative Session,
Legislative Day No. 14

Introduced By: County Council

BILL NO. 2020-12

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND PURSUANT TO CHAPTER 155, ENTITLED ZONING SECTION 155-B OF THE DORCHESTER COUNTY CODE REZONING A PARCEL OF LAND OWNED BY THREESOME AUTO SALVAGE, LLC LOCATED ON THE EAST SIDE OF CORDTOWN ROAD, CONTAINING 21.81 ACRES OF LAND, MORE OR LESS, IN THE BUCKTOWN ELECTION DISTRICT OF DORCHESTER COUNTY, MARYLAND AND BEING DORCHESTER COUNTY TAX MAP 42, GRID 16, PARCEL 315, TAX ACCOUNT NO. 13-000301, DESCRIBED IN DEED DATED MAY 11, 2018 AND RECORDED AMONG THE LAND RECORDS OF DORCHESTER COUNTY, MARYLAND IN LIBER 1560, FOLIO 88, FROM AN AGRICULTURAL CONSERVATION DISTRICT (AC) TO A HEAVY INDUSTRIAL DISTRICT (I-2).

Introduced, read first time, ordered posted on the official bulletin board of County, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

Ordered publication for once a week for two (2) successive weeks, and public hearing scheduled on Tuesday, January 19, 2021, Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:02 p.m.

By order:
Jay L. Newcomb
President of the County Council
of Dorchester County, Maryland

Dec.20
DorCo-ThreesomeAuto.ZoningPub /mlh

CC DORCHESTER FEB 03 '21 AM10:35

COUNTY COUNCIL

OF

DORCHESTER COUNTY, MARYLAND

BILL NO. 2020-12

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND PURSUANT TO CHAPTER 155, ENTITLED ZONING SECTION 155-B OF THE DORCHESTER COUNTY CODE REZONING A PARCEL OF LAND OWNED BY THREESOME AUTO SALVAGE, LLC LOCATED ON THE EAST SIDE OF CORDTOWN ROAD, CONTAINING 21.81 ACRES OF LAND, MORE OR LESS, IN THE BUCKTOWN ELECTION DISTRICT OF DORCHESTER COUNTY, MARYLAND AND BEING DORCHESTER COUNTY TAX MAP 42, GRID 16, PARCEL 315, TAX ACCOUNT NO. 13-000301, DESCRIBED IN DEED DATED MAY 11, 2018 AND RECORDED AMONG THE LAND RECORDS OF DORCHESTER COUNTY, MARYLAND IN LIBER 1560, FOLIO 88, FROM AN AGRICULTURAL CONSERVATION DISTRICT (AC) TO A HEAVY INDUSTRIAL DISTRICT (I-2).

SECTION ONE: Acting under Chapter 155, entitled "Zoning", Section 155-5(B) of The Dorchester County Code (the "Act"), be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that the following described parcel of land be and the same is hereby rezoned from an Agricultural Conservation District to a Heavy Industrial District; to wit:

ALL that lot or parcel of land situate, lying and being on the east side of Cordtown Road, containing 21.81 acres of land, more or less, in the Bucktown Election District of Dorchester County, Maryland, which was conveyed unto Threesome Auto Salvage, LLC by deed dated May 11, 2018 and recorded among the Land Records of Dorchester County, Maryland in Liber 1560, folio 88.

SECTION TWO: Be it further ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that the Director of Planning is directed to change the Dorchester County Official Zoning Maps accordingly.

SECTION THREE: And be it further ENACTED pursuant to Section 308 of the Charter of Dorchester County, Maryland that promptly after enactment of this Act, the County Manager shall cause a fair summary of this Act to be published at least once in a newspaper of general circulation in Dorchester County, Maryland.

SECTION FOUR: And be it further ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that this Bill shall be known as Bill No. 2020-12 of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage.

LIBER0007 FOLIO459

PASSED this 2nd day of February, 2021.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND

BY: _____
Acting County Manager

BY: _____
Jay L. Newcomb
President

APPROVED this 2nd day of February, 2021.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND

BY: _____
Acting County Manager

BY: _____
Jay L. Newcomb
President

Nichols – absent
Nagel – aye
Newcomb – aye
Pfeffer – aye
Travers – aye

Dec.20
DorCo-ThreesomeAuto.ZoningBill/mlh

Cecil County, MD
Friday, December 25, 2020

Chapter A387. County Council Policies and Procedures

Article VII. Rezoning Cases

§ A387-53. Rezoning cases.

A. The Department of Planning and Zoning will submit rezoning requests to the Council Manager.

B. Upon receipt of a rezoning request, the Council Manager will schedule a hearing date, with such hearing to be held before the County Council at a regularly scheduled legislative session. The Council Manager will provide the Department of Planning and Zoning with notice of the date and time of the rezoning hearing.

C. The Department of Planning and Zoning will promptly submit a staff report and recommendations, list of parties, and additional associated documentation to the Council Manager, and the Council Manager will distribute such information to the County Council.

D. The Department of Planning and Zoning will be responsible for causing legal notice of the rezoning request to be published in a newspaper of general circulation in Cecil County, for sending notification letters to the applicant and all adjoining property owners, with such notice to state the time, date and location of the public hearings to be held before the Planning Commission and the County Council, respectively, and a copy of the rezoning application and any supporting documents appended thereto.

E. At the public hearing, the Council President will open the public hearing and invite the applicant to present the rezoning case. The Council President shall then ask the staff to present their report and the recommendation from staff and the Planning Commission.

F. Following presentation by Planning and Zoning staff, the applicant and interested property owner(s) [and/or their representative(s)] may present testimony in support of the application. Citizens, including but not limited to adjoining property owners, may then present testimony in opposition to the application.

G. At the end of all testimony, the Council President will close the public hearing.

H. After the public hearing is concluded, the Council may approve or deny the applicant's request at the same meeting. If a decision is not made after the public hearing, the County Council will consider the rezoning application under old business on a future legislative session. The County Council will, at that time, either approve or deny the applicant's request.

I. After the County Council approves or denies the applicant's request, designated legal counsel will prepare a written opinion setting forth the County Council's findings of fact, applicable legal authority, and the County Council's decision. The opinion will be signed by the Council President or, if the Council President did not participate in the case, the presiding Council person at the rezoning hearing. The opinion will be promptly mailed to the applicant and all interested parties.

COUNTY COUNCIL OF CECIL COUNTY
LEGISLATIVE SESSION MINUTES
LSD 2016-01
January 5, 2016

The County Council of Cecil County met in legislative session at the County Administration Building, 200 Chesapeake Blvd., Elk Room, Elkton, MD. The following members of the Council were present:

Robert Hodge, Council President
Dr. Alan McCarthy, Vice President
Joyce Bowlsbey, Council Member
Dan Schneckenburger, Council Member
George Patchell, Council Member

NOTE: Audio recording of this meeting is available on the County website www.ccgov.org.

CALL TO ORDER
The meeting of the County Council of Cecil County of January 5, 2016 was called to order by President Hodge at 7:00 p.m. The Pledge of Allegiance was led by Scout Thomas Ream of Troop 131.

OPENING PRAYER
Councilman Schneckenburger introduced Pastor Harold Phillips from Pleasant View Baptist Church of Port Deposit, who lead the opening prayer.

APPROVAL OF AGENDA
On motion made by Vice President McCarthy, seconded by Councilwoman Bowlsbey, the Council moved to approve the legislative agenda of January 5, 2016. Motion carried unanimously.

PUBLIC HEARINGS
Rezoning Application:
Council Manager Massey stated for the record:
File No. 2015-09; Applicant: C.I. Contractors LLC and Maryland Beer Company, LLC; Location: 41 Cherry Hill Road, Elkton, MD 21921; Election District 3; Tax Map: 20; Parcel: 221; Request: To rezone .73 acres from Rural Residential (RR) to Business Intensive (BI).

Notice of the public hearing was published on December 30, 2015 and January 4, 2016.

Witnesses presenting testimony were sworn in by Council Manager Massey.

Dwight Thomey, representing the applicant, presented the applicant's request for rezoning, based on a mistake in the Comprehensive Rezoning and substantial change in the neighborhood. Mr. Thomey introduced Exhibit 1, a 24-page presentation, which included maps of the property and references to

beer making. Mr. Thomey interviewed the applicants, Kevin Taylor, Scott McCardell and Jessica Fincham.

Eric Sennstrom, Director of Planning and Zoning, stated that the Planning Commission recommended approval because of a mistake in the 2011 Comprehensive Rezoning.

Cliff Houston, Zoning Administrator, presented the staff report of findings of facts, which recommended approval due to a mistake in the 2011 Comprehensive Rezoning.

Council questions and comments ensued.

Council President Hodge opened the public hearing for public comments. Ron Lobos, Elkton, testified in support of the rezoning request.

Mr. Thomey presented closing remarks on behalf of the applicant.

Council President Hodge concluded the public hearing and announced that the rezoning case may be considered at the next legislative session.

APPROVAL OF MINUTES
On motion made by Vice President McCarthy, seconded by Councilwoman Bowlsbey, the Council moved to approve the legislative session minutes of December 15, 2015 as presented. Motion was carried unanimously.

PUBLIC COMMENTS
Ron Lobos, Elkton, commented on the next County budget and a school survey.
Harold McCanick, Elk Neck, commented on his New Year's resolution and new federal taxes.

PRESIDENT AND COUNCIL COMMENTS
Vice President McCarthy, Councilwoman Bowlsbey, Councilman Schneckenburger, and Councilman Patchell had no comments.

Council President Hodge wished everyone a Happy New Year.

INTRODUCTION OF BILLS
Council Manager Massey stated for the record:
Bill No. 2016-01 Amendment - Zoning Code - Sawmills
An Act to amend the Zoning Ordinance, Article V, Part XII Industrial Uses, Section 144 - Sawmills to eliminate the three year limitation on Special Exception for Sawmills.

Introduced and order posted on January 5, 2016. The public hearing for Bill No. 2016-01 will be advertised and scheduled on the Council legislation session of February 2, 2016.

A Resolution to release and terminate the Agricultural Land Preservation District established under the provisions of COMAR 15.15.01.04 on August 2, 2001 for a 48.983 acre property owned by James and Julia Corder at 300 Cherry Grove Road (Tax Map 52, Grid 13 Parcel 5), which is recorded among the Land Records of Cecil County in Liber. 1064, folio 501.

The Resolution was introduced and posted on January 5, 2016.

There were no comments or questions.

On motion made by Councilman Schneckenburger, seconded by Vice President McCarthy, the Council moved to approve Resolution No. 02-2016.

Roll call vote: McCarthy - Y, Schneckenburger - Y, Patchell - Y, Hodge - Y. The motion was carried by a vote of 4 to 0. Councilwoman Bowlsbey was absent.

OLD BUSINESS

Rezoning Case 2015-09 C.I. Contractors LLC and Maryland Beer Company, LLC

File: 2015-09; Applicant: C.I. Contractors LLC & Maryland Beer Company, LLC; Location: 41 Cherry Hill Road, Elkton, MD 21921; Election District: 3; Tax Map: 20; Parcels: 221; Request: to rezone .73 acres from Rural Residential (RR) to Business Intensive (B1); Property Owner: Kevin Taylor.

On motion by Vice President McCarthy, seconded by Councilman Patchell, the Council moved to approve the application of C.I. Contractors LLC and Maryland Beer Company LLC to rezone .73 acres from Rural Residential to Business Intensive based upon a mistake in the zoning classification of the property during the last comprehensive rezoning.

Roll call vote: McCarthy - Y, Schneckenburger - Y, Patchell - Y, Hodge - Y. The motion was carried by a vote of 4 to 0. Councilwoman Bowlsbey was absent.

NEW BUSINESS

Cecil County Public Schools - Budget Amendment #25

Council Members commented on the budget amendment and the explanation provided during the work session by Tom Kappra, Chief Financial Officer, Cecil County Public Schools.

On motion made by Vice President McCarthy, seconded by Councilman Schneckenburger, the Council moved to approve Cecil County Public Schools budget amendment #25.

Roll call vote: McCarthy - Y, Schneckenburger - Y, Patchell - Y, Hodge - Y. The motion was carried by a vote of 4 to 0. Councilwoman Bowlsbey was absent.

ADJOURNMENT

President Hodge adjourned the meeting at 8:01 p.m. by general consensus.

The Wicomico County Council met in Legislative Session on Tuesday, March 6, 2018 at 6:00 p.m. in Council Chambers, Government Office Building, Salisbury, Maryland.

In attendance: John T. Cannon, President; Larry W. Dodd, Vice-President; John Hall, Marc Kilmer, Ernest F. Davis, and Joe Holloway, and Matt Holloway.

Present: Laura Hurley, Council Administrator, Levin Hitchens, Assistant Internal Auditor, Robert Taylor, Attorney, and Lynn Sande, Executive Office Associate.

On motion by Mr. Dodd and seconded by Mr. Davis, the Legislative Minutes from February 20, 2018 were unanimously approved.

On motion by Mr. Hall and seconded by Mr. Dodd, the Open Work Session Minutes from February 6, 2018 – Capital Improvement and Budget Program Recap, were unanimously approved.

On motion by Mr. Hall and seconded by Mr. Dodd, the Open Work Session Minutes from February 6, 2018 – Cedar Hill Bulkhead Project-Amendment to CIP for Fiscal Years 2018-2022, were unanimously approved.

On motion by Mr. Davis and seconded by Mr. Hall, the Open Work Session Minutes from February 6, 2018 – New Vendor Complaint Form, were unanimously approved.

On motion by Mr. Davis and seconded by Mr. Hall, the Open Work Session Minutes from February 6, 2018 – Animal Ordinance (Legislative Bill 2018-01), were unanimously approved.

On motion by Mr. Davis and seconded by Mr. Hall, the Open Work Session Minutes from February 6, 2018 – Capital Improvement Budget and Program - Public Safety Building, were unanimously approved.

Robert Taylor, Council Attorney

Mr. Taylor said there are two Bills tonight both involving amendments to the Zoning Code. He said they are related in the sense that they are both products of requests made by the owner of a particular property to have that property rezoned into a new zoning district, and to have the permitted uses in that district changed. He said he points that out because there is a slight error in the Brief Book in the memorandum that was sent by Mr. Strausburg indicating these were requested by the Planning and Zoning Commission, and they are not, but they are requests made by the owner of that property, which they will get into.

Public Hearing on Legislative Bill No. 2018-02 – An Act to amend Chapter 225 of the Wicomico County Code titled "Zoning", Section 225-67, Table of Permitted Uses, and Section 226-108, Retail Sales, to add General Merchandise Retail Sales in Commercial Buildings not exceeding 10,000 square feet of gross floor area by Special Exception in the LB-2 Light Business and Residential District. Mr. Taylor said Mr. Jack Lennox, Director of Planning, Zoning, and Community Development is here to present on that, but he would like to make a point first. He said this is ordinary Legislation that is a text amendment of one of the operational provisions of the Zoning Code. He said he points that out because the next Bill is slightly different as it is a special Bill. He said, in any event, they are up for Public Hearing tonight, and, as he indicated, Mr. Lennox is here. Mr. Lenox came before Council. He said he would like to enter into their record the report of the Planning Commission which references findings included in a staff report following their Public Hearing of December 21, 2017. He said, as Mr. Taylor mentioned, this and the following article had been initiated privately, so they are considered petitioned articles. He said,

however, they were well received by the Commission, and, he believes, primarily because they are in accordance with the recent comprehensive plan adopted by Council and the Executive. He said they are starting to see the beginning of implementation of that plan in terms of zoning changes. Mr. Lennox said, when Council sees the changes, they see both text changes and map changes, and that is the sequence Mr. Taylor explained to Council. He said the particular article in front of Council right now deals very specifically with a change to the light business and residential district generically. He said he will point out that in the County right now there is one light business and residential district, and that is located on Route 50, basically, from American Legion Drive to Boundary Lane. He said that probably tells them that the purpose of that district is a transition. He said Council, in adopting the new comprehensive plan, saw a need to have, in some cases, additional districts, although those are not in front of Council today, that would serve as a transition. He said this does not get into the residential districts but provides for that transition along arterial roads, the existing one on Route 50, and the one Council will discuss later, obviously, Nanticoke Road. He said the comprehensive plan saw the need to provide for some limited additional retail considering it of a neighborhood scale, hence the cap of 10,000 square feet in this instance. He said the text change includes that, by special exception, meaning Board of Appeals and Public Hearing, they have to meet that criteria, and caps it at 10,000 square feet. Mr. Kilmer said his comment is more on the zoning change. He said they are doing this for a small section of land. He then asked if there is a need to do a more comprehensive change in zoning for the entire County now that they have adopted the comprehensive plan, to which Mr. Lennox responded, one of the policy discussions Council had with the comprehensive plan was whether to enact it all at once, or deal with it individually. He said Council knows there are things that might make sense today, and there are things that might make sense in 10 or 20 years depending on the market, and depending on the interest of property owners. He said, if they find they are making these in such a fashion that they do see it desirable to do it all at once, they do a comprehensive rezoning of the County. He said that would open up a lot of discussion in a lot of neighborhoods, and is an approach they can take. He said so far the direction they have gotten as staff was to allow property owners to now, on their schedule, fit into the County plan. He said this just happens to be the first in front of Council, and he believes there will be others as well. Mr. Dodd asked how many properties this one zoning change affects, to which Mr. Lennox responded, just one, and that is the next article. Mr. Taylor asked Mr. Cannon if Council would like to vote on this Bill before moving on to the next Bill, to which Mr. Cannon responded, they certainly could. Mr. Taylor said they should go ahead and vote on it. Mr. Cannon opened the floor for public comments. There were no public comments. Mr. Cannon closed the public hearing. There being no further discussion, by roll call vote, Mr. Matt Holloway, aye; Mr. Ernie Davis, aye; Mr. Joe Holloway, aye; Mr. John Hall, aye; Mr. Marc Kilmer, aye; Mr. Larry Dodd, aye, and Mr. John Cannon, aye, Legislative Bill No. 2018-02 was unanimously approved.

Public Hearing on Legislative Bill No. 2018-03 – An Act to Amend Chapter 225 of the Wicomico County Code titled "Zoning" amending the map entitled "Wicomico County Official Zoning Map" referred to in Section 225-16, to rezone property consisting of 4.12 acres, more or less, situated in the Salisbury Election District, Wicomico County, Maryland, bounded on the northerly side of Nanticoke Road, westerly side of Kenney Drive, and southerly side of Old Quantico Road. The property is shown and designated on County Tax Map No. 37 as Parcel 66; the property is to be rezoned from R-8 Residential to LB-2 Light Business and Residential. Mr. Taylor said he would like to point out why this is special Legislation. He said a rezoning of a specific piece of property is called piecemeal rezoning. He said the difference between this zoning and comprehensive zoning is comprehensive zoning is for large sections of the County, but it does not have to be the entire County with all the properties rezoned at one time. He said that does not necessarily mean they change the zoning district, but at least it is considered on a property-by-property basis. He said this Bill just for a specific property, and the name piecemeal is used

to describe it. He said it is permitted under the Code, and that is why they are here. He said, in addition to what is in the Code, the case law in Maryland, and there are a lot of cases on piecemeal rezoning, probably at least 100 over the years, have established some special requirements. He said one is the so-called change in State rule which he has mentioned, and he is sure Mr. Lennox will speak on it, so he will not get into the weeds of it right now. He said the other part of it, which is considered to be Council's action, is called quasi-judicial, so it is a little different from normal Legislation. He said an analogy would be a trial. He said the person who is the property owner asking for rezoning has to, essentially, establish why it should be re-zoned. He said he and Mrs. Hurley looked to see if there were any rules for Council procedure on this, and they could not find any. He said he is not aware of any, Mrs. Hurley is not either, and one of the reasons for that might be that there has not been a piecemeal rezoning in the County for a number of years, maybe 20 years or more, and even then there were not many. He said maybe there are some rules somewhere, but they could not find them. He said he talked to Mr. Cannon and suggested they follow rules that are, in general, application in other jurisdictions that do this kind of zoning, and, particularly, that do it a little bit more frequently than Wicomico County does. He said a couple of the parameters of that are 1) the witnesses would be sworn, and 2) there would be an order of presentation. He said the order of presentation he is suggesting, and this is very common, is that the Planning Commission part of it be discussed first by Mr. Lennox, then the applicant for this zoning speaks and presents whatever he or she wants to present, and then, if there are any people opposed to it, and the technical term is protestants, they would then speak. He said, other than Mr. Lennox, he would suggest they speak from the podium. He said he thinks all of the witnesses can be sworn at one time, and he would ask that when they come to the podium they just state their name and address, and state they have been sworn. He said he will do that now, and he will ask that anybody who plans on speaking to say "I do" when he repeats the oath language. He then said the oath language is "Do you solemnly swear or affirm under the penalties of perjury that the response that you give and statements that you make will be the whole truth and nothing but the truth." He said if that is their view, say "yes" so they can hear it. Members of the audience then said "I do." Mr. Cannon then asked Mr. Taylor if they could have those people stand so they know they are covering all their bases, since this is new. Those members of the audience then stood.

Mr. Lennox said, as in the previous item, he would like to enter the report of the Planning Commission for Council's record that includes the associated staff report, and the findings outlined in the staff report with the obvious intent that, if Council accepts the Commission's recommendation, which, in this case, is in support of the petitioner, Council will include those by reference in their action. He said on December 21, 2017 the Planning Commission held an advertised Public Hearing in this room with appropriate notification given to adjacent property owners to the posting of the property. He said they reviewed the proposal as well as the criteria that Mr. Taylor eluded to in the State of Maryland where they have to demonstrate for a map change, and, again, this is a map change, and they have to document change or mistake. He said he recalls that, since the new zoning code in 2004, they have done one map change, he believes, and that was deemed a mistake. He said, in this particular instance, they are looking at change, and the change actually goes back to the comprehensive plan. He said they held many workshops and Public Hearings, and it was ultimately acknowledged that, since the previous comprehensive plan, there had been a change in the Nanticoke Road corridor with the dualization of the road, the additional commercial property developments along the way, and also the need to identify a transition area. He said the property in question, he is told, is the location of the former William's Market before they moved a little further down Nanticoke Road. He said there has been additional commercialization, there has been additional traffic, there has been a need, and recognition that this is probably not the best location for a pure residential category, and that is what it is right now under R8. He said the comprehensive plan said there has been a change, recommended that a change take place, and now the

zoning request mirrors that. He said, in listening to public testimony and looking at the County comprehensive plan, the Commission chose to recommend to Council that the change be approved, that it be approved along the lines of the change which they feel has been well documented, again, through the staff report and the comprehensive plan, and they are recommending, at this point, Council's favorable consideration.

Mr. Cannon opened the floor for public comments. Mr. Brock Parker with Parker and Associates in Salisbury, Maryland, came to the podium. He said he has been sworn. He said, as the applicant's representation, they are doing the civil engineering and land planning for the project, and he feels like he has to at least make a presentation so they can at least check that box on the new rules of order. He said he does not want to belabor the point, but he would certainly like to echo what Mr. Lennox has stated very artfully, and he could not have said it better himself. He said he would like to respectfully request Council adopts the findings the Planning Commission has made, and rezone this property based on a change. He said, if Council likes, he can elaborate, but he thinks he will save them all the time and effort if that is okay with Council. There were no further public comments. Mr. Cannon closed the public hearing.

Mr. Taylor said he thinks Mr. Lennox introduced the Planning Commission file, essentially, on this. He said that should be marked as Planning Commission Exhibit 1. He said he thinks that is, essentially, what is in the Brief Book, so that would be an exhibit in this hearing. He said it is the only one since nobody else spoke.

Mr. Taylor said this is an opportunity for Council to discuss the matter as desired, and they could vote on it tonight. He said, as he pointed out in his memo, he thinks it is a good idea to have findings of fact. He said they do not necessarily have to be written, though they can be, but, whatever they are, they should be specific as to the points outlined in the memo. He said he can go over those if Council wants him to. Mr. Cannon said he does not know if it is required at this time. He said, for the record, he thinks Council does not have questions. He said they could certainly move forward on the vote, but he is trying to follow what Mr. Taylor's recommendation had originally been. Mr. Taylor said the recommendation is, no matter when they vote, to essentially have findings they have discussed as desired, and adopted. He said they could do that by adopting the findings that were made by the Planning Commission, which he believes, in this case, are stated in the staff report, or they could discuss it further, and make whatever findings they care to make. Mr. Cannon asked if that is somewhat a foregone conclusion, or is Mr. Taylor saying they need consensus to formally adopt them, to which Mr. Taylor responded, they either need a vote or a consensus. He said ordinary practice where there is some matter of discussion on a particular rezoning is normally for Council to discuss informally, essentially in a Work Session, and if they cannot be hammered out right at that time, to come back at a later meeting and have somebody prepare them, in the meantime, based on what their consensus is, and then, finally, adopt them. He said, if they want to skip over that second meeting, they can adopt them tonight, but there should be findings. He said, as he said, they can discuss them and make their own, or, if they think the findings in the staff report, which are the ones the Planning Commission, essentially, adopted, Council could adopt that as well. He said it is their decision, essentially. Mr. Cannon asked if he could get a consensus from Council to consider the Planning Commission's report as adopted along with this Legislation. Mr. Kilmer said, as someone who drives by this on a daily basis, the Planning Commission seems to have gotten it right in the way the corridor has changed there. He said he is in favor of adopting their findings as Council's findings, and move forward. There being no further discussion, by roll call vote, Mr. John Hall, aye; Mr. Kilmer aye; Mr. Dodd, aye; Mr. Joe Holloway, aye; Mr. Davis, aye; Mr. Matt Holloway, aye, and Mr. Cannon, aye, Legislative Bill No. 2018-03 was unanimously approved.

Mr. Cannon recognized Mrs. Jamie Dykes, Ad Interim State's Attorney, and Sheriff Mike Lewis in the audience, and said it is good to have them there.

Laura Hurley, Council Administrator

Mrs. Hurley said she would like to make once announcement, and that is there is a change to the Agenda for this evening. She said they added a Work Session to discuss House Bill 1476, and House Bill 1595. She said the updated Agenda is posted on the County's website, and is also on the Council Table.

Resolution No. 21-2018 – Confirming the Appointment of Mr. Ernie Colburn to the Wicomico County Ethics Commission. Mrs. Hurley said the Ethics Commission provides published advisory opinions, and makes determinations regarding complaints filed by any person alleged in violation of the ethics law. She said the Ethics Commission is also responsible for all forms required under the ethics law, is responsible for developing procedures and policies for advisory opinion requests, processing of complaints, as well as to conduct a public information program regarding the purpose and application of the ethics law. There being no discussion, on motion by Mr. Hall and seconded by Mr. Davis, Resolution No. 21-2018 was unanimously approved.

Resolution No. 22-2018 – Confirming the Appointment of Ms. Ruth Colbourne as Director for the Department of Corrections. There being no discussion, on motion by Mr. Hall and seconded by Mr. Dodd, Resolution No. 22-2018 was unanimously approved.

Resolution No. 23-2018 – Authorizing the County Executive to Accept a Grant Award from the Maryland Department of Commerce, Acting Through the Maryland Tourism Development Board, in an amount up to $75,000, and to Authorize the County Executive to Execute a Grant Agreement on Behalf of Wicomico County, Maryland. Mrs. Hurley said this grant is in partnership with the Town of Ocean City, Worcester County, and the Ward Foundation to advertise and promote the 2018 National Folk Festival. Ms. Kristen Goller, Wicomico County's Tourism Manager, and Mr. Steve Miller, Director of Parks, Recreation, and Tourism, came before Council. Ms. Goller said they applied for and have been awarded a private sector consumer advertising grant from the Maryland Office of Tourism to help promote the National Folk Festival out of market. She said they have partnered with Ocean City and Worcester County to put together the application, as well as the Ward Foundation. She said, in partnership, they would be contributing a total of $75,000, and then the State would match that, giving them a total budget of $150,000 to promote the Festival out of market. Mr. Cannon asked if they have guidelines as far as what they are planning to do with these funds, to which Ms. Goller responded, yes. She said they will report back to the State after the campaign runs, but they have worked with Ocean City and Worcester County to put together a tentative schedule. She said they will be doing some print and billboard advertising, and then heavily on social and web-based advertising. She said they are targeting the Baltimore, D.C., Philadelphia, and Harrisburg markets, and then they are also targeting the Ocean City Beach traffic. She said they have some billboards planned for Route 50, and some non-traditional advertising in Ocean City for the summer to capture that audience as well. There being no further discussion, on motion by Mr. Hall and seconded by Mr. Dodd, Resolution No. 23-2018 was unanimously approved.

Public Comments:

Mr. Rob Garcia came to the podium. He said he lives in Salisbury, and he is representing himself. He said he is also a firefighter, but he is not here to talk about the Fire Department as he is pretty sure Council heard a lot about them last year, but he is here to speak about Salisbury-Wicomico 2.0. He said, for a little background on this, recently last year Amazon caused quite a stir when they announced they were looking for a second headquarters promising 50,000 jobs, and $5 billion-dollars-worth of investment. He

said, however, Amazon was not looking for a super fulfillment center, but were looking for an area to support their technology for Amazon Web Services. He said Amazon Web Services is the largest cloud-based provider in the world, and accounts for 75 percent of Amazon's profits. He said, as a research project, he went ahead and looked to see what it would take for Salisbury and Wicomico County to go ahead and support a technology company like that. He said his results were pretty surprising. He said their power grid is big enough to support several data centers, or super computer clusters. He said, thanks to the Maryland Broadband Cooperative, they have some of the fastest band width in the world. He said they have plenty of commercial space, and they are cheap as they are about 30 percent cheaper than across the Bridge. He said Paolo Alto and San Jose are about five times more expensive than here in Salisbury. He said their problem is people. He said their largest employers are government, manufacturing, healthcare services, and education. He said when they bring people over here, if they are not local, they have a tendency to go away. He said he spoke to somebody at Wallops Island, and she told him when she recruited, after one year, they went ahead and started looking for jobs over at Greenbelt. He said another person at Wallops Island told him about the boom when the space shuttle program closed down, and all of these engineers came up to Wallops Island to go to work, but then, as soon as Space Next started hiring, they all went away. He said he spoke to City Council last week, and he spoke to Dave Ryan just yesterday, and, the thing is, what they are trying to do is to figure out a way to go in and future-proof their pipeline. He said they have all of the big pieces, everything is paid for, the bandwidth is paid for, the buildings are paid for, the power grid is paid for, and all they have to do is go ahead and start building up their local groups. He said it is going to take a couple of years, but there are certain things that cost no expense that the County and the City can go ahead and do. He said, for example, if the Board of Education submits students every month or every quarter for recognition by Council, that would show a commitment to STEM, and would also provide the children with something to put on their resumes and college applications later on. He said they could expand the Wicomico Economic Impact Scholarship to include a little bit of STEM. He said, as far as the people using gale force out of Wicomico County library, they could provide them with an incentive saying they are going to give them deferred rent, or lowered rent the same way they do with the Riverside Apartments, and also go ahead and bring them together like the living-learning community at Salisbury University does. He said the Maryland STEM festival is always looking for places to go. He said they could offer the Civic Center, and all it takes is a phone call to say "Would you like to come to Salisbury to show a little bit of work." He said, most importantly, they need an advocacy group to go across the Bridge and say "We are Wicomico County, we have the power, we have the bandwidth, we have the space, we are cheap, and you tell me what you need people-wise, and I will fill that job." He said there are a lot of people who want to go ahead and help. He said he spoke to the VFW, and they are more than willing to send a representative to go down to the bases and ask if they would like to come over to Salisbury. He said they carry clearances, they carry benefits, they carry experience, and they could go ahead and attract some of those companies, especially Northrop Grumman that just bought all of ATK, and is moving into Wallops Island. He said, in this paper, there are a bunch of recommendations, and he just asks Council to go ahead and look at it to start off the discussion. He said the reason being is, when these companies have a discussion about where they want to move to, they want Salisbury-Wicomico County to be part of that discussion.

Council Comments: There were no Council comments.

Council President Comments: There were no Council President comments.

There being no further business, on motion by Mr. Dodd, seconded by Mr. Matt Holloway, and unanimously approved, the Legislative Session was adjourned to go into Open Work Sessions, followed by an Closed Work Sessions and an Administrative Closed Work Session pursuant to the General

Provisions Article, Section 3-305(b)(7)(8) to consult with staff, consultants, and other individuals about pending or potential litigation, and to consult with legal counsel, and Section 3-104 to discuss Council Administrator Direction.

The Wicomico County Council met in Closed Work Sessions, and an Administrative Closed Work Session on Tuesday, March 6, 2018, at approximately 7:30 p.m. in Council Chambers, Government Office Building, Salisbury, Maryland.

In attendance: John T. Cannon, President; Larry W. Dodd, Vice President; John Hall, Marc Kilmer, Joe Holloway, Ernie Davis, and Matt Holloway.

Present: Laura Hurley, Council Administrator, Steve Roser, Internal Auditor, Levin Hitchens, Robert Taylor, Attorney, Levin Hitchens, Assistant Internal Auditor, and Lynn Sande, Executive Office Associate.

The purpose of the Closed Work Session was to consult with staff, consultants, and other individuals about pending or potential litigation, and to consult with legal counsel. The purpose of the Administrative Closed Work Session was to discuss Council Administrator Direction.

On motion by Mr. Dodd, seconded by Mr. Matt Holloway, and unanimously approved, the Closed Work Session was adjourned at approximately 9:45 p.m. The legal authority for the Closed Work Session is General Provisions Article, Section 3-305(b)(7)(8).

On motion by Mr. Dodd, seconded by Mr. Matt Holloway, and unanimously approved, the Administrative Closed Work Session was adjourned at approximately 9:45 p.m. The legal authority for the Administrative Closed Session is General Provisions Article, Section 3-104.

Signatures on next page

Legislative Minutes
March 6, 2018

John T. Cannon, President

Larry W. Dodd, Vice President, District 3

Ernest F. Davis, District 1

Marc Kilmer, District 2

John B. Hall, District 4

Joe Holloway, District 5

Matt Holloway, At-Large

Laura Hurley, Council Administrator

ENROLLED

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND
LEGISLATIVE SESSION, 2018
BILL NO. 2018-03

Introduced: February 6, 2018

BY: The Council President at the request of the County Executive.

AN ACT to amend Chapter 225 of the Wicomico County Code, titled "Zoning", amending the map entitled "Wicomico County Official Zoning Map" referred to in Section 225-16, to re-zone property consisting of 4.12 acres, more or less, situated in the Salisbury Election District, Wicomico County, Maryland, bounded on the northerly side of Nanticoke Road, westerly side of Kenney Drive, and southerly side of Old Quantico Road. The property is shown and designated on County Tax Map No. 37 as Parcel No. 66; the property is to be re-zoned from R-8 Residential to LB-2 Light Business and Residential.

WHEREAS, Change has occurred in the area through the intensification of use in part as a result of the dualization of a segment of Nanticoke Road (MD 349), retail-oriented special exceptions issued for properties contained within the neighborhood, as well as increased commercial uses in the adjacent area; and

WHEREAS, this change in character for the neighborhood was recognized by the legislative body and the Planning and Zoning Commission as part of the comprehensive plan approval and the re-zoning of this parcel represents incremental implementation of the Plan recommendation; and

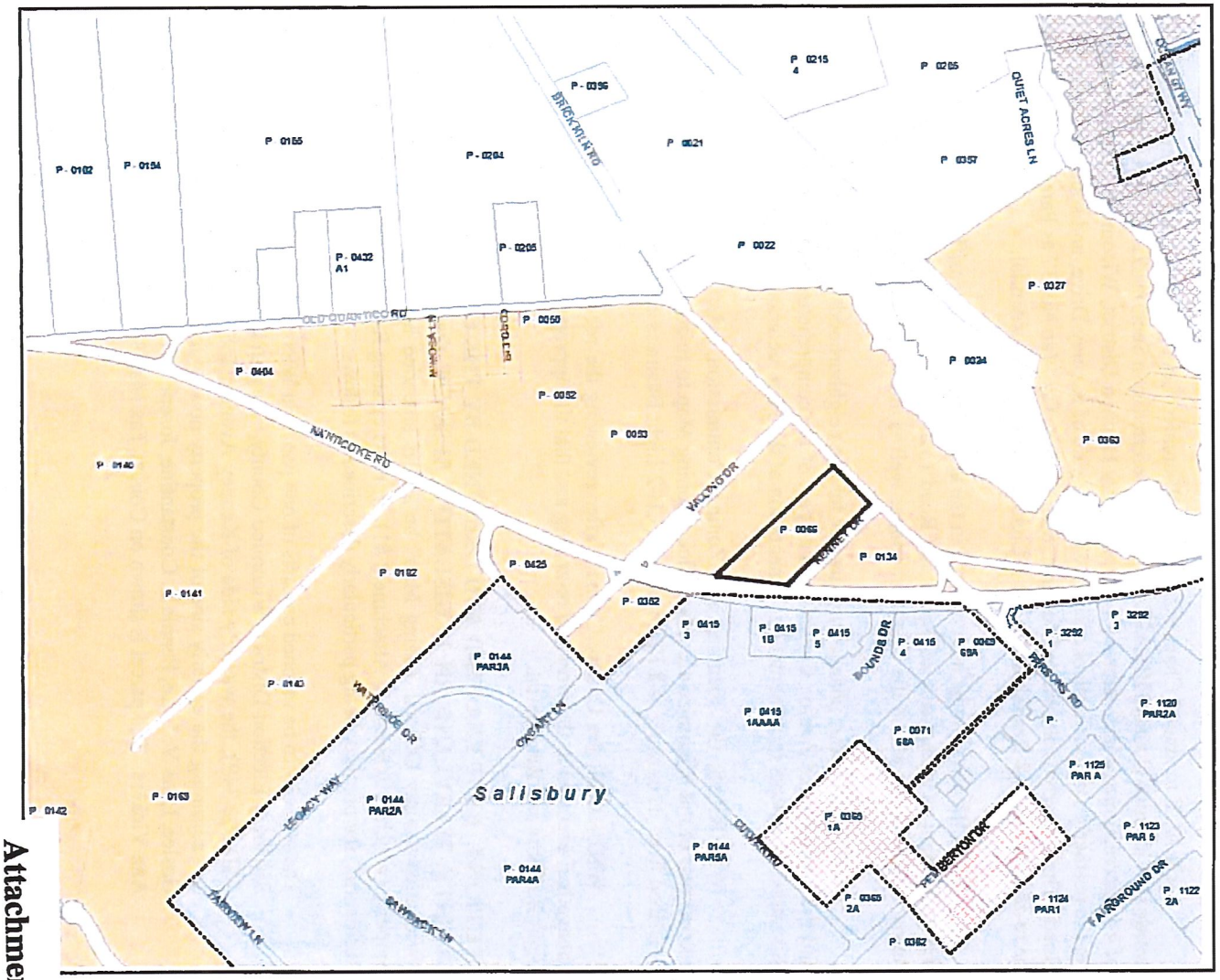
WHEREAS, the Planning and Zoning Commission, after a public hearing, recommended the amendment of the Wicomico County Official Zoning Map to re-zone the area herein referred to and herein described from its existing R-8 Residential to LB-2 Light Business and Residential; and

WHEREAS, the County Council, after reviewing the record and receiving testimony determined change had occurred in the aforesaid re-zoning and that the appropriate designation for the property is LB-2 Light Business and Residential.

SECTION I. BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, IN LEGISLATIVE SESSION, that Chapter 225, Section 225-16, entitled "Wicomico County Official Zoning Map" be and is amended by reclassifying the hereinafter described property (which is depicted in Attachment #1), from its existing R-8 Residential to LB-2 Light Business and Residential, the property being particularly described as follows:

> The property to be rezoned consists of one parcel in Wicomico County totaling 4.12 acres situated in Salisbury Election District, Wicomico County, Maryland, on the northerly side of Nanticoke Road (MD Rte 349), the westerly side of Kenney Avenue, and the southerly side of Old Quantico Road, and adjoining the easterly side of the property now or formerly owned by Faisal Farooq, Denise J. Goslee, Lena V. Lake, Pennie L. Constantine, Joseph P. Barlow, Jr. and Danielle L. Bounds and Lois Ann Vickers. The parcel is shown on County Tax Map 37 as Parcel 66.

WICOMICO COUNTY ZONING MAP



Nanticoke Road Rezoning

- Bridges
- Chesapeake Bay Critical Area
- Historic Districts
- 8000 ft Turning Radius
- Airport Overlay District
- Neighborhood Preservation District
- Salisbury Critical Area
- WicomicoCounty Boundary
- Wicomico SDE Railroads
- Wicomico SDE.Airport_Runways_Taxiways
- Wicomico SDE Municipal_Areas
- Parcels
- Municipal Names
- Street Centerlines
- Wicomico Zoning

- A - 1 Agricultural - Rural
- Airport Business Park
- C - 1 Select Commercial
- C - 2 General Commercial
- C - 3 Regional Commercial
- CID Corporate Industrial District
- I - 1 Light Industrial
- I - 2 Heavy Industrial
- LB - 1 Light Business & Institubonal
- LB - 2 Light Business & Residential
- R - 8 Residential
- R - 15 Residential
- R - 20 Residential
- R - 30 Residential
- REC Residential, Educabonal & Cultural
- TT Town Transitional
- VC Village Conservation
- Municipality

Attachment #1

COUNTY COUNCIL
OF
WICOMICO COUNTY, MARYLAND

2018 Legislative Session

Legislative Day No. 03

LEGISLATIVE BILL NO. 2018-03

INTRODUCED BY: President of the Council at the request of the County Executive

AN ACT to amend Chapter 225 of the Wicomico County Code, titled "Zoning", amending the map entitled "Wicomico County Official Zoning Map" referred to in Section 225-16, to re-zone property consisting of 4.12 acres, more or less, situated in the Salisbury Election District, Wicomico County, Maryland, bounded on the northerly side of Nanticoke Road, westerly side of Kenney Drive, and southerly side of Old Quantico Road. The property is shown and designated on County Tax Map No. 37 as Parcel No. 66; the property is to be re-zoned from R-8 Residential to LB-2 Light Business and Residential.

Introduced and read first time on February 6, 2018. Ordered posted and public hearing scheduled for March 6, 2018 at 6:00 p.m.

Laura Hurley
Laura Hurley, Council Administrator

PUBLIC HEARING: Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, the Bill was read for a second time at a public hearing held on March 6, 2018 and concluded on March 6, 2018.

Laura Hurley
Laura Hurley, Council Administrator

CERTIFICATION: The undersigned hereby certifies that this Bill was Approved and Adopted by the County Council of Wicomico County, Maryland, on the 6th day of March, 2018.

Laura Hurley
Laura Hurley, Council Administrator

Presented to the County Executive for approval this 8th day of March, 2018 at 4:00 p.m. (5 days §411)

Laura Hurley
Laura Hurley, Council Administrator

BY THE EXECUTIVE:

County Executive

APPROVED
Date: 3-8-18
(21 days §411)

VETOED
Date: _____

BY THE COUNCIL:

Option One: This Bill, having been approved by the County Executive and returned to the Council, becomes law on March 8, 2018 and effective on: May 7, 2018.
(60 days §311)

Option Two: This Bill, having received neither the approval nor the disapproval of the Executive within 21 days of its presentation, stands enacted on _____ and becomes effective on _____.
(60 days §311)

ENROLLMENT: **Legislative Bill No. 2018-03** is herewith submitted to the County Council of Wicomico County for enrollment as being the text as finally passed.

Laura Hurley
Laura Hurley, Council Administrator
Date: 3/9/2018

SECTION II. BE IT FURTHER ENACTED THAT this Bill will be known as Bill No. 2018-03 of Wicomico County, Maryland, and will take effect 60 days after its final passage, unless a proper Petition for Referendum is filed before then. If a timely Petition is filed, the Bill will not take effect until the expiration of 30 days following the approval of this Bill by a majority of the qualified voters of the County voting in a referendum.

Certified correct as passed and adopted by the County Council of Wicomico County, Maryland, this 6th day of March, 2018.

WICOMICO COUNTY, MARYLAND

BY: John T. Cannon, President

BY: Laura Hurley, Secretary

I HEREBY CERTIFY that copies of the above Bill are available for distribution to the public and press at the time of its introduction.

Laura Hurley, Secretary

Explanation:

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
~~Strikeout indicates matter deleted from law.~~
~~CAPITAL STRIKEOUT~~ indicates matter stricken from Bill by Amendment.
Underlining indicates Amendments to Bill.

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2019 Legislative Session, Legislative Day No. : November 19, 2019

Bill No.: 1438

Expiration Date: January 23, 2020

Introduced by: Mr. Callahan, Mr. Divilio, Mr. Lesher, Mr. Pack, Ms. Price

A BILL TO AMEND THE CRITICAL AREA OVERLAY DISTRICT ON THE OFFICIAL ZONING MAPS OF TALBOT COUNTY TO ESTABLISH A NEW MODIFIED BUFFER AREA, IDENTIFIED AS "COMMUNITY #39", ON CERTAIN LOTS OR PARCELS OF LAND IN THE VILLAGE OF BELLEVUE, TALBOT COUNTY, MARYLAND, DESCRIBED AS TAX MAP 46, PARCEL 141 (LOT 4), PARCEL 115, AND A CERTAIN PORTION OF PARCEL 148

By the Council: November 19, 2019

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, December 17, 2019 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By Order Susan W. Moran

Susan W. Moran, Secretary

A BILL TO AMEND THE CRITICAL AREA OVERLAY DISTRICT ON THE OFFICIAL ZONING MAPS OF TALBOT COUNTY TO ESTABLISH A NEW MODIFIED BUFFER AREA, IDENTIFIED AS "COMMUNITY #39", ON CERTAIN LOTS OR PARCELS OF LAND IN THE VILLAGE OF BELLEVUE, TALBOT COUNTY, MARYLAND, DESCRIBED AS TAX MAP 46, PARCEL 141 (LOT 4), PARCEL 115, AND A CERTAIN PORTION OF PARCEL 148

WHEREAS, Chapter 190 of the Talbot County Code ("Chapter 190") authorizes establishment of Modified Buffer Areas subject to the findings and standards under Code § 190-15.H.; and,

WHEREAS, a map amendment application was submitted to the County Council in accordance with Code § 190-55, seeking amendment to the critical area overlay maps of Talbot County for the establishment of a new Modified Buffer Area (MBA), identified as "Community #39" in the Village of Bellevue, Talbot County, Maryland; and,

WHEREAS, the Planning Director prepared a staff report and recommendation on the proposed map amendment for the Planning Commission; and,

WHEREAS, on November 6, 2019, the Planning Commission discussed the proposed map amendment and recommended that the proposed amendment be adopted with certain conditions as set forth herein; and,

WHEREAS, the County Council has reviewed the proposed map amendment in accordance with Code §§ 190-15 and 190-55 and approves such amendment as set forth herein.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, as follows:

SECTION ONE: In accordance with Talbot County Code § 190-15.11 H. 3., the Talbot County Council hereby makes certain findings with the respect to the establishment of the new Modified Buffer Area proposed hereby as set forth in Exhibit "A", which is attached hereto and incorporated by reference herein.

SECTION TWO: That the Critical Area Overlay District on Official Zoning Maps of Talbot County shall be and is hereby amended to establish a new Modified Buffer Area, identified as "Community #39", on certain lots or parcels of land in the Village of Bellevue, Talbot County, Maryland, described as Tax Map 46, Parcel 141 (Lot 4), Parcel 115, and a portion of Parcel 148 (the "Properties"), as shown on a drawing entitled "Modified Buffer Area, Community No. 32, 33, & 39, Vicinity of Bellevue and Avonvue, Tax Maps 46 & 47," prepared by the Talbot County Department of Public Works, dated November 12, 2019, which drawing is attached hereto as Exhibit "B" and incorporated by reference herein.

SECTION THREE: That the Properties are hereby reclassified from (VH-CAO) Village Hamlet Zoning District with Critical Area Overlay to (VH-CAO-MBA #39) Village Hamlet—Critical Area Overlay Zone, Modified Buffer Area Community #39. All other parcels on the Official Zoning Maps shall remain in their respective existing zoning designations.

SECTION FOUR: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

SECTION FIVE: This Ordinance shall take effect sixty (60) days from the date of its passage.

EXHIBIT "A"
TO TALBOT COUNTY BILL NO. 1438

The Talbot County Council hereby makes the following findings in accordance with Talbot County Code § 190-15.11 H. 3:

a. *That existing patterns of residential, commercial, industrial and institutional development prevent the Shoreline Development Buffer from fulfilling its functions for water quality protection and conservation of wildlife habitat.* The proposed new Modified Buffer Area is based on the pattern of development existing on December 1, 1985. The Buffers along Parcel 141 (Lot 4), Parcel 115, and a portion of Parcel 148 are already impacted with development that prevents the Buffer from fulfilling its function. A portion of Parcel 148, however is undeveloped, has a natural shoreline and contains significant wetlands that provide habitat and water quality benefits and has been excluded from the MBA.

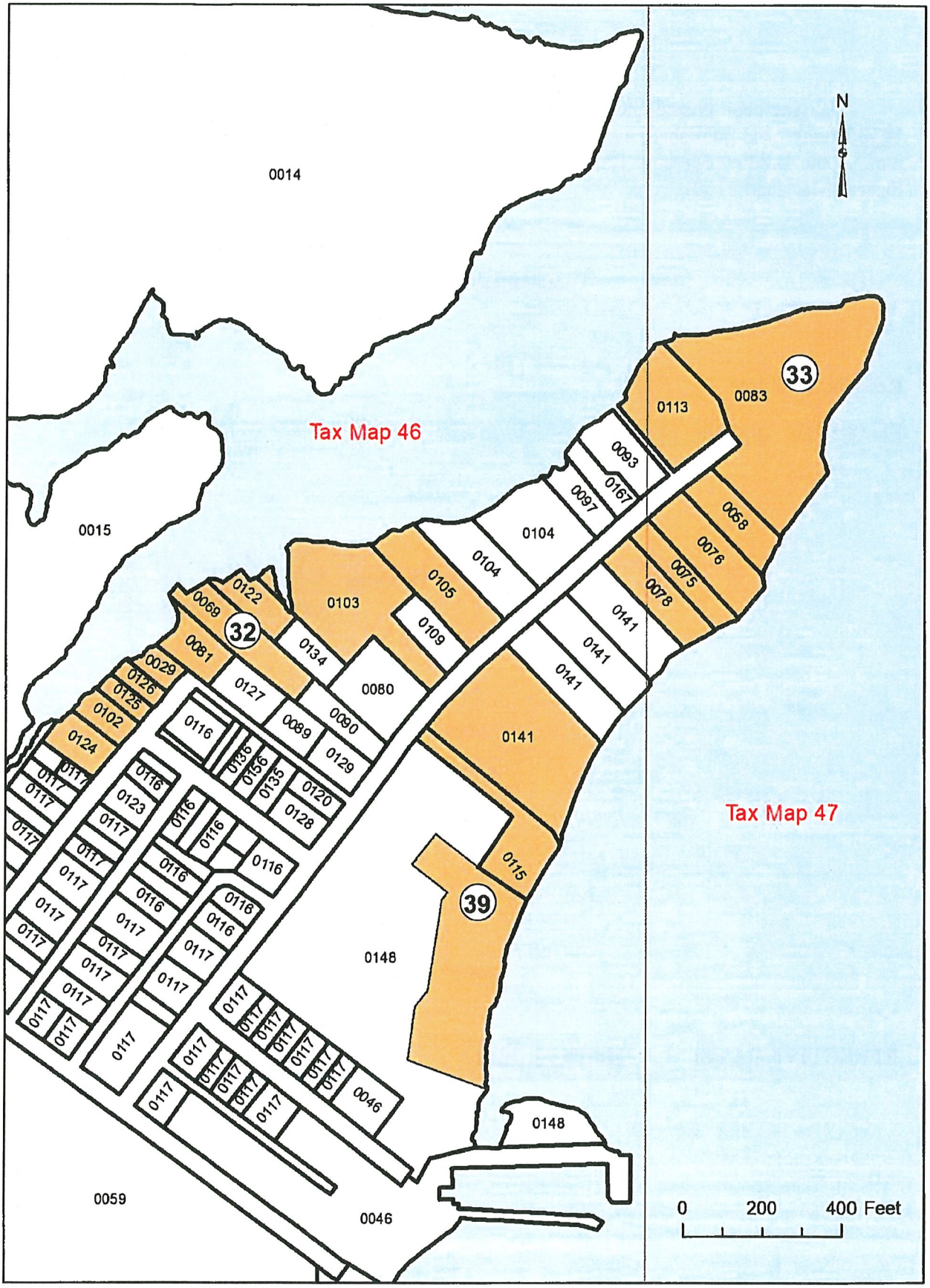
b. *That the lots in the proposed Modified Buffer Area were created prior to August 13, 1989.* All lots were originally created prior to August 13, 1989. The reconfigured lots of Parcel 148 do not count as "new" lots for the purposes of the MBA.

c. *That the primary structures in the proposed Modified Buffer Area are located within the Shoreline Development Buffer.* Each of the three improved lots within the proposed MBA have an existing residential dwelling located in the 100' SDB.

d. *That other development activities (i.e., accessory structures, access roads, septic systems, riprap and bulkheading, etc.) impact the Shoreline Development Buffer.* Properties, or portions thereof, within the Modified Buffer Area contain driveways, parking areas, retaining walls and/or bulkheading.

e. *That the Shoreline Development Buffer does not contain forest cover.* There is no existing forest cover within the buffer area of the lots within the proposed MBA.

EXHIBIT "B" to Bill 1438



Modified Buffer Area, Community No. 32, 33, & 39
Vicinity of Bellevue and Avonvue
Tax Maps 46 & 47

Talbot County Public Works
November 12, 2019

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. 1438 having been published, a public hearing was held on Tuesday, December 17, 2019 at 6:30 p.m. in the Bradley Meeting Room, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

Read the third time.

ENACTED: **January 14, 2020**

By Order Susan W. Moran
Susan W. Moran, Secretary

Pack	-	Aye
Divilio	-	Aye
Callahan	-	Aye
Price	-	Aye
Lesher	-	Aye

EFFECTIVE DATE: **March 14, 2020**

ORDINANCE NO. 876

AN ORDINANCE REGARDING AN APPLICATION FOR FOURTH AMENDMENT TO THE WAKEFIELD VALLEY GENERAL PLAN OF DEVELOPMENT.

WHEREAS, pursuant to Md. Code Ann., Local Gov't Art., § 5-213, the Mayor and Common Council of Westminster, Maryland (the "City") have the authority to provide reasonable zoning regulations subject to the referendum of the voters at regular or special elections; and

WHEREAS, pursuant to Sections 11 through 18 of the City Charter, the City has, for the purpose of promoting the health, security, general welfare and morals of the community, the authority to divide the City into zoning districts and to regulate therein the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land, in accordance with a comprehensive plan and for enumerated purposes, which include the control and direction of municipal expansion and development, provided that such regulations are to be made with reasonable consideration of the character of the districts and their peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, pursuant to the aforestated authority and the additional authority contained in Md. Code Annotated, Land Use Article, Division 1, "Single Jurisdiction Planning and Zoning," Title 4, "Zoning", the City has enacted a zoning ordinance, now codified, as amended, at Chapter 164, "Zoning", of the City Code ("the Zoning Ordinance"); and

WHEREAS, in Section 164-133, "Effect of Prior Approval", of the Zoning Ordinance, the Mayor and Common Council provided that, for properties as to which development plans had been approved prior to November 5, 1979, such plans would "continue to be approved and valid after said date, regardless of the zonal classification of the real property as to which such plans pertain, and said real property shall be developed in accordance with the provisions of such plans. Such plans may be amended in accordance with the procedures provided for the amendment of development plans contained in § 164-188J of this chapter"; and

WHEREAS, Section 164-188J sets forth certain factors that are to be considered by the Common Council in approving an amendment to a development plan: and

WHEREAS, the Westminster Planning and Zoning Commission approved the City of Westminster's 2009 Comprehensive Plan on September 2009; and

WHEREAS, the City adopted the City of Westminster's 2009 Comprehensive Plan on September 28, 2009, by Resolution No. 09-8, and adopted a Comprehensive Zoning Map by Ordinance No. 819, dated October 25, 2010; and

WHEREAS, on July 21, 2016 WV DIA Westminster L.L.C., the owner of certain property located in Westminster, Maryland, which property is within an area covered by a General Plan of Development for Wakefield Valley-Fenby Farm ("the Wakefield Valley GPD") adopted and

approved prior to November 5, 1979 (as subsequently amended), filed an application for a Fourth Amendment to the Wakefield Valley GPD; and

WHEREAS, on November 17, 2016, after conducting a public hearing, the Westminster Planning and Zoning Commission recommended denial of the application; and

WHEREAS, on December 12, 2016, The Mayor and Common Council of Westminster held a public hearing on the application for amendment to the Wakefield Valley GPD, at which the applicant has an opportunity to present testimony, including testimony from expert witnesses, and other evidence in support of its application and members of the public, including the owners of real property in the vicinity of the subject property also had an opportunity to be heard in support or in opposition to the proposed amendment; and

WHEREAS, on January 9, 2017, The Mayor and Common Council engaged in deliberations based upon the record as developed at the December 12, 2016 public hearing with respect to whether to grant the application for an amendment to the Wakefield Valley GDP and voted to disapprove the application subject to a written decision; and

WHEREAS, The Mayor and Common Council of Westminster has determined that the application does not meets the criteria set forth in the § 164-188J of the City Code; and

WHEREAS, it is the intention of The Mayor and Common Council of Westminster to act unfavorably upon the application for Fourth Amendment to the Wakefield Valley GPD for the reasons set forth herein.

Section 1. NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MAYOR AND COMMON COUNCIL OF WESTMINSTER that the Application for Fourth Amendment of the Wakefield Valley General Plan of Development submitted on behalf of WV DIA Westminster LLC is denied for the reasons set forth in the accompanying decision attached hereto as Exhibit A.

Section 2. Be it further enacted and ordained by The Mayor and Common Council of Westminster that this Ordinance shall take effect immediately upon its passage and approval.

INTRODUCED this 27th day of February 2017

Shannon Visocsky, City Clerk

ADOPTED this 13th day of March, 2017

Shannon Visocsky, City Clerk

APPROVED this 13th day of March 2017

Kevin R. Utz, Mayor

APPROVED FOR FORM AND LEGAL SUFFICIENCY
this 13th day of ~~February,~~ March 2017.

Elissa D. Levan, City Attorney

DECISION OF THE COMMON COUNCIL

CITY OF WESTMINSTER

RE: APPLICATION FOR FOURTH AMENDED DEVELOPMENT PLAN
WAKEFIELD VALLEY
DEVELOPER: WV DIA WESTMINSTER LLC

* * * *

On or about July 21, 2016, WV DIA Westminster LLC filed an application for a proposed Fourth Amendment to the General Plan of Development for Wakefield Valley, seeking the addition of 53 new houses on what is now designated as "Parcel W" on the Special Purpose Plat Resubdivision of "P" and "Q" Wakefield Valley, recorded in Plat Book 54, Pages 127 and 128 of the Land Records of Carroll County. Parcel W comprises 38.2934 acres and is zoned C-Conservation. It is located on the southeastern side of Bell Road across from Chadwick Drive, to the west of and abutting in part Fenby Farm Road.

The subject property is a portion of a larger aggregation of parcels generally designated as "Wakefield Valley-Fenby Farm[1]", comprising approximately 734 acres of land that was annexed by the City of Westminster in 1977 by Annexation Resolution No. R-77-6. The City did not then have a zoning ordinance; the City adopted a General Plan of Development for the property in 1978. The City adopted a Zoning Ordinance, now Chapter 164 of the City Code, on or about November 5, 1979. In that ordinance, the City Council made special provision for properties that were the subject of pre-existing general plans of development. The section now codified at § 164-133(B) of the City Code provides, in pertinent part:

> All preliminary plans, final plans, revised preliminary or final plans and all development plans of any type which have been approved by the Mayor and Common Council and/or the Commission prior to November 5, 1979, shall continue to be approved and valid after said date, regardless of the zonal classification of the real property as to which such plans pertain, and said real property shall be developed in accordance with the provisions of such plans. Such plans may be amended in accordance with the procedures provided for the amendment of development plans contained in § 164-188J of this chapter. ....

Section 164-188(J) provides,

> [T]the Common Council shall make the following specific findings, in addition to any other

[1] "Fenby Farm" was the name given to the southern portion of the area covered by the Wakefield Valley GPD, an area now known commonly as Avondale Run, situated generally between New Windsor Road and the former Wakefield Valley Golf Course. The northern portion of the GPD area was known as "Wakefield Valley". Confusion is caused by the fact that "Fenby Farm" was later adopted as the name of a subdivision constructed largely on Parcel H to the east of Tahoma Farm Road, situated in the "Wakefield Valley" portion of the GPD area, not the "Fenby Farm" area.

findings which may be found to be necessary and appropriate to the evaluation of the proposed reclassification:
(1) That the zone applied for is in substantial compliance with the use and density indicated by the Master Plan or sector plan and that it does not conflict with the general plan, the City's capital improvements program or other applicable City plans and policies.
(2) That the proposed development would comply with the purposes, standards and regulations of the zone as set forth in Articles II through XV, would provide for the maximum safety, convenience and amenity of the residents of the development and would be compatible with adjacent development.
(3) That the proposed vehicular and pedestrian circulation systems are adequate and efficient.
(4) That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site.
(5) That any proposals, including restrictions, agreements or other documents, which show the ownership and method of assuring perpetual maintenance of those areas, if any, that are intended to be used for recreational or other common or quasi-public purposes, are adequate and sufficient.
(6) That the submitted development plan is in accord with all pertinent statutory requirements and is or is not approved. Disapproval of a development plan by the Common Council shall result in a denial of the rezoning application of which the development plan is a part.

The applicant at no point requested rezoning of the property. Its application was, therefore, for permission to develop residential units on the property in excess of the number of such units previously allotted to the parcel that is currently in the Applicant's ownership, notwithstanding the existing zoning for the property, based upon an analysis of the history, circumstances and residential unit allocations conferred upon the entire Wakefield Valley GDP area. Because there was no piecemeal rezoning requested or implemented the "change-mistake" rule is inapplicable. The exact nature of the change for which the Applicant advocates here is not entirely clear but it appears to be in the nature of a comprehensive rezoning (or adoption of a "mini-master plan", *see, e.., Board of County Commissioners v. Carroll County v. Stephans*, 286 Md. 384 (1979), because the Wakefield Valley GPD functions in lieu of a comprehensive zoning of the GPD area.

There is a strong presumption of correctness attaching to a comprehensive rezoning because it is a legislative function (*See., e.g., Nottingham Village, Inc. v. Baltimore County*, 266 Md. 339 (1972); *Trustees of McDonough Educ. Fund & Inst. v. Baltimore County*, 221 Md, 550 (1960) ("Baltimore County, in legislating new zoning for the whole county, was exercising the plenary power delegated to it by the General Assembly. When a new comprehensive zoning plan or map, designed to cover a substantial area is adopted, it is entitled to the same presumption of correctness as the original zoning.") The motives or the wisdom of the legislative body in passing a comprehensive zoning are not subject to judicial inquiry. A comprehensive zoning, as a policy decision of the local legislatures, requires no further justification to support it since it is presumptively correct. *See, e,g., People's Counsel for Baltimore County v. Beachwood I Ltd. Partnership*, 107 Md. App. 627, 634 (1995).

Even though the present matter impacts directly only a small part of the Wakefield Valley GPD area, it is analogous to *Potomac Valley League v. Montgomery County Council*, 43 Md. App. 56 (61 (1979) in which the court said that the Montgomery County Council had validly approved a comprehensive zoning, even though it involved only four parcels totaling 1.39 acres. The Court reasoned that the subject zoning was a culmination of a prior comprehensive zoning approved in 1974 and partially implements in a 1970 master plan.

The 1978 Development Plan envisioned a mixed use development approximately 670-768 residential units on the 734 acre property, along with 20 acres of commercial uses. The Plan incorporated the existing Wakefield Valley Golf Course ("the Golf Course"), which comprised the "major open space", as described in the Wakefield Valley GPD. At the time, the total open space in the area covered by the GPD was 31%. The Golf Course open space was described in the original GPD as the "central spine of the combined properties." The GPD area was comprised of twenty-one parcels, alphabetically designated A-U. A summary of the densities assigned to each parcel in the GPD area is attached to the GPD description and is in the record.

The Golf Course subsequently acquired additional land to expand from an 18-hole course to a 27-hole course. As a result of the acquisition for that expansion, the Development Plan was amended in 1987 to transfer residential units from the Golf Course to the parcel known as "Parcel H"[2], resulting in an allocation of 167-214 residential units for that parcel. At that time, the open space contemplated for the Wakefield Valley area was set at 47%, as confirmed by a letter from Carol Dell, the City's then-Director of Planning and Public Works, to Dr. Earl Griswold concerning a GPD update and/or revision, which letter appears in the record.

After various swaps of property and densities not all of which are clearly documented in the historical record, the Golf Course eventually occupied the parcels shown on the original Wakefield Valley GPD map as Parcels E, L, M, T and part of G. The development of Parcels A-D, F, H-K and N-U are shown on individual maps attached to the December 7, 2016 Memorandum to the Mayor and Common Council from Planning Director William Mackey.

In 1989, Michael and Carol Oakes requested an amendment to the General Development Plan reducing the allocation of residential units to 55 for Parcel H. The requested amendment was granted by Common Council, subject to certain conditions that included a condition originally recommended by the City's Planning Commission "[t]hat the approved General Development Plan for Wakefield Valley be modified to show a reduction of the 112-159 residential units and ten acres of commercial development on Parcel H." The Oakes' development became the Fenby Farm subdivision,

In 2006, an entity known as Woodhaven Building & Development, Inc. ("Woodhaven") submitted an application for a Third Amendment to the Wakefield Valley GDP, seeking to

[2] Parcel R, to the south of Parcel H on the original 1978 plan, and part of Parcel G, to the west of Tahoma Farm Road, became merged into Parcel H and part of Fenby Farm subdivision. Parcel T, to the south of Parcel R, became part of the Golf Course and eventually was re-designated as Parcel M3.

construct 320 senior cottages on 167 acres of what was then part of the Golf Course containing nine holes. Woodhaven argued that it sought merely to use existing density rights originally allocated to Parcel H. The Common Council found that those rights had been extinguished by the Oakes Amendment and that no density units remained available for transfer to Woodhaven.

It further found, "the proposed development would not be compatible with adjacent existing development. The subject property has previously been developed as part of an overall scheme of open space with golf course facilities. While the Applicant has advanced an argument that this development would be of low density, it obviously would be more density than is currently allowed. Additionally, testimony was received from individuals residing in the area as to the adverse change in the character of the neighborhood, particularly as to the siting of the units."

The analysis in that regard remains the same. Although the golf course has ceased operating, much of the former golf course property has come into the possession of the City for open space or recreational use, which is analogous from the perspective of the residents of the area to the golf course character. What is clear from that process is that, even though it was apparent as early as 2006 that the Golf Course was in decline (because it apparently intended to divest itself of 1/3 of the playing area of the course), the City objectives for open space in the Wakefield Valley GPD did not change.

In 2009, by Resolution No. 09-8, the City adopted a new Comprehensive Plan which provided with respect to the subject property, in Chapter 5, "Land Use," Section 6, "Conservation":

> The 1978 Development Plan for the Wakefield Valley restricted the development of housing within the parcel where Wakefield Valley Golf Course and Conference Center exists today. However, the current land use is Low Density Residential even though the development plan will not allow any residential homes to be built in this area. The WPZC recommended a land use change from Low Density Residential to Conservation to reflect the development plan and the existing land use. The existing land use for this parcel is the Wakefield Valley Golf Course and Conference Center surrounded by forest land and natural landscapes as well as a stream that runs from the southwest corner to the eastern portion of the parcel. This change reflects how the land is currently used; however, this change does not change the approved Development Plan for Wakefield Valley. *The 2009 Comprehensive Land Use Map has re-designated the land use of this 240 acre parcel from Low Density Residential to Conservation.*

(Emphasis added.)

The Golf Course ceased operating at some point and its property was acquired by the Applicant and resubdivided into Parcels W, X, Y and Z. The applicant transferred approximately 188 acres of the property, comprising parcels Y and Z, to the City by deed dated February 26, 2016, pursuant to a Memorandum of Understanding dated June 2, 2014.

The open space requirement for the Wakefield GDP area is 47%. As development presently

stands, the actual open space in the Wakefield Valley GDP area is 45%, including an undeveloped Parcel W. If Parcel W were to be developed in accordance with the proposed Fourth Amendment, the open space would be 40%.

The Council finds that the proposed amendment is not in substantial compliance with the use and density indicated by the master plan or sector plan and that it conflicts with the general plan, City's capital improvements program or other applicable City plans and policies.

The language of Section 164-133(B), which as counsel for the applicant pointed out, apparently applies only to the property originally included in the Wakefield Valley General Development Plan and to no other property in the City, indicates that the subject property is not the same as other parts of the City in terms of how the zoning evolved and how the plan for this property has progressed. The trajectory of past decisions has generally been to reduce the number of lots allocated to these parcels all across the area and generally increase the proportion of open space relative to residential space. The proposed plan does not fit into that trajectory and that sort of long range view of what Wakefield Valley is supposed to look like, not because it is residential development but because of the density of it.

The residential density that is permissible in the Conservation zone is one unit per three acres, or 12 units for a 38-acre parcel. While the Common Council acknowledges that the development of the property is not strictly bound by the zonal classification, it finds that the Conservation zone designation of the subject property is useful guidance with respect to the City's vision for the area. The present proposal varies from the type of density suggested by the zoning by a material and substantial amount for which the Council finds no justification in the evidence presented to it.

The Council specifically does not decide, in connection with the present application, that there is no possible proposal for residential density above one unit for three acres that that it might find to be consistent with its vision for the Wakefield Valley development area. The Council notes that it does not view the Conservation zoning of the property as dispositive of appropriate density, but is merely a guideline and consideration for a decision with respect to whether the application before it is appropriate for approval. Council accepts the observations of planning staff that, if the land were to be developed in accordance with the density permitted in the Conservation zone, a cluster design approach could be accommodated on 14 acres including the street or plaza, allowing for community facilities, open space preservation and a uniquely designed setting to provide a special sense place.

The Council concludes that there was no evidence that the plan does not satisfy the criteria of § 164-188(J)(2)-(5) or the requirement of (J)(6) that the proposal be otherwise in accord with pertinent statutory requirements.

In accordance with § 164-188, the Council is permitted to make "any other findings which may be found to be necessary and appropriate to the evaluation of the proposed reclassification." As it did in 2006, the Council recognizes the unfavorable recommendations advanced by its staff and Planning Commission, and incorporates those recommendations by reference. The Common Council finds that the medium density residential development proposed by the Applicant for this

particular parcel will not serve the public interests of the residents of the City in retaining the low-density character of the Wakefield Valley general area. Much of the surrounding area is developed with larger lot residential subdivisions. While Council acknowledges that some of the surrounding communities are constructed upon smaller lots, it notes the observation of Planning Staff that those communities would not likely meet the requirements of the City's current design development guidelines.

Action

As a result of the above, the Common Council disapproves the proposed amendment to the Wakefield Valley Development Plan.

Common Council of Westminster

Date: March 13, 2017 By: Suzanne P. Albert

Suzanne P. Albert
President, Common Council