

CB77-2021

Sayers, Margery

From: Joan Lantos <joanlantos@gmail.com>
Sent: Thursday, October 28, 2021 2:13 PM
To: CouncilMail
Subject: testimony on CB77-2021
Attachments: CB77_2021 Lantos testimony10.21.docx

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Attached please find my comments on the proposed Council Bill 77-2021.

Joan Lantos

TO: Howard County Council

FROM: Joan Lancos
6110 Covington Road
Columbia, MD 21044

RE: Council Bill 77-2021

I believe the County Council should approve CB77-2021 which provides for a Hearing Examiner to conduct hearings on Zoning Board cases, create and maintain a record of the proceedings, and provide a report to the Zoning Board on findings of fact and conclusions of law based on the criteria under which the zoning modification is requested. I believe this new process will be fair to both Petitioners and Opponents as it will streamline the hearing of a case and better organize the record for further review.

I have attended all hearings and work sessions held by the Zoning Board on two major cases still under review. The hearings have often been sidetracked by issues not related to criteria for approval. Questions have frequently arisen that require legal opinion to be obtained, further delaying the process. It would be beneficial to have cases heard and the record maintained by someone who is familiar with process, zoning law, criteria, and conduct of hearings. I think it is difficult for elected lay boards to have a working knowledge of all the pieces needed to successfully complete complex cases.

I listened to your recent work session on the bill. It was clear that the current Hearing Examiners have good working knowledge of process and law related to zoning. It was interesting to hear that Howard County is a dinosaur as far as how zoning cases are heard. Obtaining additional information from other jurisdictions such as Montgomery County who have successfully used a similar process for years would be helpful. It could be useful to table this bill for a month to gather such information.

As I learned from my work as a member of the Planning Board for ten years, zoning cases can be very emotional. Community members can be very attached to a certain setting or use and may fear change to that use. However, the zoning regulations contain specific criteria for approval of zoning petitions. It would be a useful tool for Howard County to use an experienced Hearing Examiner to collect the testimony according to the applicable criteria and produce findings of fact and conclusions that are consistent with the requirements of law rather than require elected officials to separate emotional testimony from what can be considered in the case. As a Planning Board member, I sometimes had to vote for a project that I didn't like but that met the criteria because my decisions had to be based on the rules and not the emotions that were before me.

CB77-2021 provides for an efficient use of county resources to give all parties to a case the due process they deserve under the law. I encourage you further study options used by other nearby jurisdictions, refine your draft, and ultimately, pass Council Bill 77-2021.

10.28.21

Sayers, Margery

From: Stuart Kohn <stukohn@verizon.net>
Sent: Thursday, October 28, 2021 10:04 AM
To: CouncilMail
Cc: stukohn@verizon.net
Subject: Suggested Amendment to CB77-2021 to Eliminate Mediation

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

Dear Council Members,

The Howard County Citizens Association, HCCA suggests a second Amendment to CB77-2021 to eliminate Mediation from any Zoning Board Case. The first being having the Zoning Counsel present when applicable.

Please consider deleting the Mediation clauses from CB77-2021 on page 3, lines 7 thru 24 as we stated in our testimony on 18 October. There is no reason for mediation as the Zoning Board's role is to make your decision on the given criteria. All references to Mediation in the Zoning Regulations should be removed.

The call for Mediation is nothing but a stalling tactic by the Zoning Board from making a decision. You should adhere to the quote by Teddy Roosevelt. "Justice consists not in being neutral between right and wrong, but finding out the right and upholding it, wherever found, against the wrong." Councilman Opel Jones was absolutely right when in the Hickory Ridge case he was the only member to say, "No" to Mediation. He stated we are here to do a job that's why we were elected. In the CEF Chapelgate case which I was very involved the Zoning Board wanted us to go to Mediation. We initially told them "No as this case is about the criteria which the Petitioner has not met. It is not about mediation." Approximately six months later all of a sudden we received a letter from the Zoning Board via postal mail prior to presenting our closing. The writing was on the wall. On the first day of Mediation the Mediators at the Howard County Community College asked, "why are you even present." This said it all! In addition the Petitioner should not be required to pay the fees?

We appreciate your consideration in the suggested Amendments in an attempt to establish a better Zoning process for ALL.

Stu Kohn
HCCA President

Sent from my iPhone

Sayers, Margery

From: stukohn@verizon.net
Sent: Wednesday, October 27, 2021 2:07 PM
To: CouncilMail
Cc: stukohn@verizon.net
Subject: Suggested Amendment to CB77-2021

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

Dear County Council Members,

The Howard County Citizens Association, HCCA suggests an Amendment to CB77-2021. Please consider the wording in Bold below to be included on Page 1, after Line 21.

The current wording in bold below is on the Zoning Board website and should be honored especially because no where does it mention the Zoning Counsel only applies to "Change and Mistake" cases. This concern needs to be addressed now as the issue has gone on far too long. We simply need to have clarity and if nothing else attention to detail regarding the current reading on the Zoning Board's website.

The Zoning Counsel is employed by the County Council on a part-time, contractual basis. The Zoning Counsel appears at all Zoning Board hearings concerning piecemeal zoning map amendments for the purposes of producing evidence and testimony in support of the comprehensive zoning classification of the property and to facilitate the compilation of a complete record. The Zoning Counsel may present evidence and witnesses, examine and cross-examine witnesses, and present argument, however, does not represent the County, is not a party to a case and does not have a right of appeal in connection with any case. The Zoning Counsel may advise citizens individually and is available to speak to any group regarding zoning procedures in Howard County, but cannot engage in the practice of law or render legal advice. Eileen E. Powers is the current zoning counsel.

The same in Bold above should be considered to be included on Page 3, after Line 6 of CB77-2021.

Stu Kohn
HCCA President

Sayers, Margery

From: Christopher J. Alleva <jens151@yahoo.com>
Sent: Monday, October 25, 2021 4:00 PM
To: CouncilMail
Cc: Gelwicks, Colette; Williams, China; Knight, Karen; Janice Wright; Katherine L. Taylor
Subject: Response to Office of Law's Reply to Alleva's Suggestions/Additional Documentation for CB 77-2021
Attachments: BA 718 D Two Farms Board of Appeals Dismissal.pdf; BA 718-D, Two Farms Admin. Dismissal.pdf

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

Dear Members of the Howard County Council:

The Office of Law suggested that the Hearing Examiner on these matters is separate from the Board of Appeals. Undoubtedly, this is the Council's intent here. Nevertheless and needless to say, we're dealing with lawyers here and they're paid to parse the rules and regulations to the client's advantage.

A good example of this was BA 718 D, an appeal of a Planning Board SDP approval that was dismissed by the Hearing Examiner for exceeding the 180 day mandated period to keep a case on the unscheduled docket.

The Hearing Examiner dismissed the case in January 2017. Upon the dismissal, the petitioner attempted to appeal the case on the merits to the Board of Appeals and by-pass the Hearing Examiner. Eventually, the Board of Appeals dismissed the case.

This example illustrates the need to make sure everything is buttoned up. I would also endorse Katherine Taylor's comments and concerns. Finally, I would like to point out again that there are longstanding blatant errors in the County Charter, the Hearing Examiner's and Board of Appeals Rules of Procedures which is not a real confidence builder.

The error in the Charter mis-references Article 25 A of the MD Code that was repealed and replaced by Division III, Express Powers Act of the Local Government Article 10-305. The Charter mandates the Council must approve any amendments to the Rules of Procedure, whereas 10-305 permits the legislative agency to adopt their own rules.

I would be pleased to detail my concerns more fully if you are so inclined.

Best Regards,

Chris Alleva

IN THE MATTER OF

Two Farms, Inc.,

Appellant

* BEFORE THE
* HOWARD COUNTY
* BOARD OF APPEALS
* BA Case No. 718-D
*

ORDER

The Howard County Board of Appeals convened on February 22, 2018 to hear oral arguments and deliberate on the Motion to Dismiss Appeal filed by The Columbia Association and the Motion to Dismiss Appeal filed by Raj Gupta, Nova Oil, LLC, Brian England and British American Building, LLC, and the response thereto filed by Two Farms, Inc., in Board of Appeals Case No. BA 718-D.

William Erskine, Esquire, represented the Columbia Association. James L. Parsons, Jr., Esquire, represented Raj Gupta, Nova Oil, LLC, Brian England and British American Building, LLC. Sang Oh, Esquire, represented Two Farms, Inc.

Upon review of both Motions to Dismiss Appeal and for the reasons set forth in the Motions, it is this 13th day of December 2018, by the Howard County Board of Appeals, hereby

ORDERED, that the Motions to Dismiss Appeal are **GRANTED** and the Appellant's appeal is hereby **DISMISSED**.


ATTEST:

HOWARD COUNTY BOARD OF APPEALS


Robin Regner, Secretary

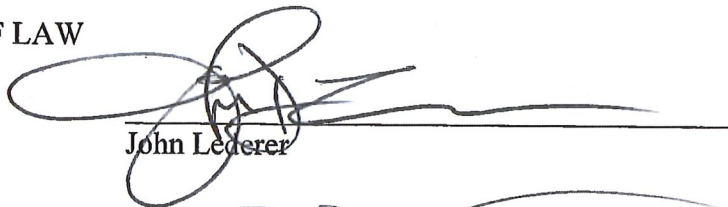

James Howard, Chairperson

APPROVED AS TO FORM:



Neeven Kurtom, Vice-Chairperson

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc
County Solicitor


John Lederer


Barry M. Sanders
Assistant County Solicitor


Steven Hunt

Did Not Participate
*William Santos

*William Santos was appointed to the Board of Appeals on April 2, 2018. William Santos did not participate in the Motions hearing.

IN THE MATTER OF

* BEFORE THE

TWO FARMS, INC.

* HOWARD COUNTY

Appellant

* HEARING EXAMINER

CASE NO. BA 718-D

ADMINISTRATIVE DISMISSAL

As Board of Appeals Case No. 718-D has been on the Unscheduled Docket since June 9, 2016, pursuant to a letter dated June 9, 2016 from the Hearing Examiner to Sang Oh, attorney for the Appellant, and in accordance with Section 100.I.3. of the Howard County Zoning Regulations which states:

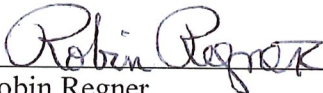
"After 180 cumulative days, an inactive petition shall be dismissed by the Hearing Authority"

it is this 30th day of January, 2017, by the Howard County Hearing Examiner ORDERED:

That the above-captioned Board of Appeals Case No. 718-D, Two Farms, Inc., is hereby DISMISSED.

ATTEST:

HOWARD COUNTY HEARING EXAMINER



Robin Regner
Administrative Assistant



Michele L. LeFaivre

Sayers, Margery

From: LISA MARKOVITZ <lmarkovitz@comcast.net>
Sent: Tuesday, October 19, 2021 6:01 PM
To: CouncilMail
Subject: re: CB77 2021

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

Dear Council Members,

The People's Voice did not testify on this Bill even though the subject matter is something we have been working on for a very long time, due to the pros and cons of the proposed changes. It is a good thing to at least consider how to distance the Council Members from at least some Zoning Board duties so you can discuss these issues whenever possible with your constituents.

We do want to go on record though, reminding the Council that for about 10 years now, it has been annually pointed out that the Zoning Board cannot legally change zoning maps that are not change/mistake cases. This would include CEF's because that floating zone specifically states it does not have to prove change/mistake.

Thus, any alteration of the Zoning Board's duties should start with having the Council have to enact legislation to implement any zoning map change done by the Zoning Board on a non change/mistake case. 202(g) is pretty exact and clear on this. Joel Hurewitz has been talking about this lately, on CB50, and CB77, which is great. I brought this up in 2012, and 2014. The People's Voice has asked for this fix annually in our legislative wish list we send every year (usually in January).

It is something that the office of law should look at again, especially if working on any decision-making authority changes.

Thanks,
Lisa Markovitz
President, The People's Voice