

Introduced	<u>10-4-2021</u>
Public Hearing	<u>10-18-2021</u>
Council Action	<u>12-6-2021</u>
Executive Action	<u>12-13-2021</u>
Effective Date	<u>2-12-2022</u>

County Council of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 16

Bill No. 77 -2021

Introduced by: Deb Jung and Christiana Rigby

AN ACT to provide for a hearing examiner to hear certain matters in the jurisdiction of the Zoning Board; specifying the powers and duties of, and the procedures to be used by, the hearing examiner, including the requirement to issue a certain report; specifying the contents of the report; specifying the duties of the Zoning Board with respect to the actions of the hearing examiner; clarifying when certain mediation occurs; providing for the rights of the parties, including the right to file exceptions, in matters heard by the hearing examiner; and generally relating to Piecemeal map amendments and development plan approvals.

Introduced and read first time Oct 4, 2021. Ordered posted and hearing scheduled.
 By order Michelle R. Harrod
 Michelle R. Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on Oct 18, 2021.
 By order Michelle R. Harrod
 Michelle R. Harrod, Administrator

This Bill was read the third time on Dec 6, 2021 and Passed , Passed with amendments , Failed .
 By order Michelle R. Harrod
 Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 7 day of Dec, 2021 at 4⁰⁰ a.m./p.m.
 By order Michelle R. Harrod
 Michelle R. Harrod, Administrator

Approved/Vetoed by the County Executive Dec 13, 2021
Calvin Ball
 Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; Text in small capitals indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

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

3 *By amending*

4 *Title 16 - Planning, zoning and subdivisions and land development regulations.*

5 *Subtitle 2. - Zoning*

6 *Sec. 16.203A. Hearing Examiner*

7 *Sec. 16.204. Piecemeal map amendments and development plan approvals.*

8

9

10

HOWARD COUNTY CODE

11 **SEC. 16.203A. – HEARING EXAMINER.**

12 (A) *IN GENERAL.*

13 (1) EXCEPT AS SET FORTH IN SECTION 16.203A(A)(3), A HEARING EXAMINER SHALL FIRST
14 HEAR THE PETITIONS THAT ARE AUTHORIZED TO BE HEARD BY THE ZONING BOARD UNDER SECTION
15 16.204 OF THIS SUBTITLE.

16 (2) A HEARING UNDER THIS SECTION SHALL BE HELD IN THE SAME MANNER AS A HEARING
17 THAT THE ZONING BOARD HOLDS UNDER SECTIONS 16.204 AND 16.206 OF THIS SUBTITLE AND THE
18 HEARING EXAMINER SHALL NOT ISSUE A DECISION BUT SHALL ISSUE A REPORT. WHEN THE HEARING
19 EXAMINER HOLDS A HEARING UNDER THIS SECTION, THE HEARING SHALL PROCEED AS SET FORTH IN
20 SECTIONS 16.204 AND 16.206 OF THIS SUBTITLE AS IF THE TERM “ZONING BOARD” OR “CHAIRPERSON”
21 INCLUDES “HEARING EXAMINER.”

22 (3) THE ZONING BOARD SHALL ADOPT RULES OF PROCEDURE FOR THE HEARING EXAMINER IN
23 ZONING BOARD CASES.

24 ~~(3)~~(4) THE ZONING BOARD SHALL HEAR AND DECIDE A CASE IF:

25 (I) THE HEARING EXAMINER POSITION IS VACANT; OR

26 (II) THE ZONING BOARD DETERMINES THAT THE HEARING EXAMINER IS UNABLE TO
27 HEAR THE CASE BECAUSE OF A CONFLICT OF INTEREST OR OTHER DISQUALIFICATION; OR

28 (III) THE ZONING BOARD BY MAJORITY VOTE DECIDES TO HEAR THE CASE.

29 (B) *REPORT*

1 (1) (i) THE HEARING EXAMINER SHALL ISSUE A REPORT ON EACH PETITION HEARD BY
2 THE HEARING EXAMINER.

3 (ii) THE HEARING EXAMINER SHALL ISSUE THE REPORT WITHIN 60 DAYS AFTER THE
4 CONCLUSION OF THE HEARING UNLESS THE ZONING BOARD SPECIFIES A DIFFERENT TIME.

5 (2) THE REPORT SHALL INCLUDE FINDINGS OF FACT, SUMMARIES OF ARGUMENTS AND
6 RESPECTIVE POSITIONS IN THE CASE OR THEORY IN SUPPORT OF IT, AND CONCLUSIONS OF LAW.

7 (3) THE REPORT IS NOT AN ORDER OR FINAL ACTION OF THE ZONING BOARD.

8 (4) THE REPORT SHALL BE SIGNED BY THE HEARING EXAMINER AND SENT TO THE ZONING
9 BOARD ADMINISTRATOR TO BE DISTRIBUTED TO THE MEMBERS OF THE ZONING BOARD, EACH PARTY TO
10 THE CASE, AND POSTED ON THE ZONING BOARD'S WEBSITE. THE REPORT SHALL BE DEEMED ISSUED ON
11 THE DATE THAT THE REPORT IS SIGNED BY THE HEARING EXAMINER.

12 (C) *RECORD*

13 (1) THE RECORD SHALL INCLUDE:

14 (i) ALL ITEMS LISTED IN SECTION 2.121(A) OF THE COUNTY CODE;

15 (ii) MAPS;

16 (iii) RECORDINGS OF THE HEARINGS HELD BY THE HEARING EXAMINER;

17 (iv) PRESENTATION BY THE DEPARTMENT OF PLANNING AND ZONING; AND

18 (v) ALL OTHER MATERIALS PROVIDED TO THE HEARING EXAMINER BY THE PETITIONER,
19 THE OPPOSITION, AND GOVERNMENT AGENCIES.”.

20 (2) FOLLOWING THE CLOSE OF THE RECORD, THE HEARING EXAMINER SHALL SEND THE RECORD
21 TO THE ZONING BOARD ADMINISTRATOR TO BE DISTRIBUTED TO THE MEMBERS OF THE ZONING BOARD.

22 (D) ~~*EXCEPTIONS; ACTIONS BY THE ZONING BOARD.*~~

23 (1) (H) AFTER A HEARING EXAMINER ISSUES A REPORT, A PARTY MAY SUBMIT TO THE
24 ZONING BOARD EXCEPTIONS TO THE REPORT.

25 (2) (H) EXCEPTIONS SHALL BE IN WRITING AND SHALL BE FILED WITH THE ZONING
26 BOARD WITHIN 20 BUSINESS DAYS AFTER THE HEARING EXAMINER'S REPORT IS ISSUED. THE PARTY
27 FILING EXCEPTIONS SHALL SEND THE EXCEPTIONS TO THE ZONING BOARD ADMINISTRATOR AND ALL
28 OTHER PARTIES IN THE CASE BY BOTH EMAIL AND FIRST-CLASS MAIL, POSTAGE PAID. THE EXCEPTIONS

1 SHALL SPECIFY IN DETAIL THOSE ITEMS TO WHICH THE PARTY EXCEPTS AND THE REASONS WHY THE
2 PARTY EXCEPTS. ANY PARTY MAY FILE A WRITTEN RESPONSE TO ANY OTHER PARTY'S EXCEPTIONS
3 WITHIN 20 BUSINESS DAYS OF THE FILING OF ANY EXCEPTIONS.

4 (3) (H) ON THE FILING OF EXCEPTIONS, THE ZONING BOARD SHALL SCHEDULE AN ORAL
5 ARGUMENT ON THE EXCEPTIONS IN A TIMELY MANNER. THE ORAL ARGUMENT IS LIMITED TO THOSE
6 MATTERS TO WHICH EXCEPTIONS HAVE BEEN TAKEN. EACH PARTY SHALL BE LIMITED TO 30 MINUTES
7 TOTAL OF ORAL ARGUMENT FOR ALL EXCEPTIONS FILED BY THAT PARTY. THE ZONING BOARD MAY
8 CHOOSE TO TAKE EVIDENCE ON AN EXCEPTION.

9 (2) ~~EVERY DECISION AND FINAL ORDER IN A PIECEMEAL MAP AMENDMENT OR DEVELOPMENT
10 PLAN CASE SHALL BE IN WRITING, SIGNED BY A MAJORITY OF THE ENTIRE ZONING BOARD, ATTESTED BY
11 THE ZONING BOARD ADMINISTRATOR, AND SHALL BE ACCOMPANIED BY FINDINGS OF FACT AND
12 CONCLUSIONS OF LAW AND SHALL BE MADE A PART OF THE RECORD OF PROCEEDINGS. THE FINAL ORDER
13 OF THE ZONING BOARD DENYING OR GRANTING THE PETITION FOR A PIECEMEAL MAP AMENDMENT, OR
14 APPROVING OR DISAPPROVING A DEVELOPMENT PLAN, SHALL BE FILED WITH THE DEPARTMENT OF
15 PLANNING AND ZONING, WHICH SHALL MAINTAIN IT AS PART OF THE OFFICIAL RECORDS OF THE COUNTY.
16 THE ZONING BOARD MAY DECIDE BY MAJORITY VOTE TO REMAND THE PETITION TO THE HEARING
17 EXAMINER FOR ADDITIONAL TESTIMONY AND HEARING.~~

18 (E) PRESENTATION TO THE ZONING BOARD.

19 THE REPORT, ALONG WITH THE RECORD, SHALL BE PRESENTED BY THE HEARING EXAMINER TO THE
20 ZONING BOARD AT A MEETING OF THE ZONING BOARD.

21 THE HEARING OF EXCEPTIONS TO THE REPORT SHALL FOLLOW THE HEARING EXAMINER'S
22 PRESENTATION.

23 (F) ACTIONS BY THE ZONING BOARD

24 EVERY DECISION AND FINAL ORDER IN A PIECEMEAL MAP AMENDMENT OR DEVELOPMENT PLAN
25 CASE SHALL BE IN WRITING, SIGNED BY A MAJORITY OF THE ENTIRE ZONING BOARD, ATTESTED BY THE
26 ZONING BOARD ADMINISTRATOR, AND SHALL BE ACCOMPANIED BY FINDINGS OF FACT AND CONCLUSIONS
27 OF LAW AND SHALL BE MADE A PART OF THE RECORD OF PROCEEDINGS. THE FINAL ORDER OF THE ZONING
28 BOARD DENYING OR GRANTING THE PETITION FOR A PIECEMEAL MAP AMENDMENT, OR APPROVING OR
29 DISAPPROVING A DEVELOPMENT PLAN, SHALL BE FILED WITH THE DEPARTMENT OF PLANNING AND
30 ZONING, WHICH SHALL MAINTAIN IT AS PART OF THE OFFICIAL RECORDS OF THE COUNTY. THE ZONING
31 BOARD MAY DECIDE BY MAJORITY VOTE TO REMAND THE PETITION TO THE HEARING EXAMINER FOR
32 ADDITIONAL TESTIMONY AND HEARING.

1 Sec. 16.204. - Piecemeal map amendments and development plan approvals.

2 (a) *Zoning Board.* The Zoning Board may exercise the Zoning Authority delegated to it by this subtitle
3 to make decisions on piecemeal map amendments and development plans in pursuance of a petition filed
4 in accordance with section 16.205 of this subtitle and shall establish procedures for doing so.

5 (b) *Mediation.* The Zoning Board may refer an applicant and other persons affected by a pending
6 application, other than piecemeal map amendment cases based on the change/mistake rule as established
7 by Maryland Case Law, to the Mediation and Conflict Resolution Center, Inc., of Howard County or a
8 conflict resolution or mediation service which has been deemed acceptable by the Board. The purpose of
9 such referral shall be to resolve conflicts between these parties, but the results thereof shall not bind the
10 Board to any result. Any resolution that is agreed upon by both parties shall be subject to findings of the
11 Board required by law. Petition approval may not be granted solely on the basis of mediation resolution.

12 A referral may be made either before or after a public hearing on a pending petition decision, but only after
13 an application is deemed complete. ANY MEDIATION ~~[[Mediation]]~~ shall ~~[[not]]~~ occur ~~[[after]]~~ PRIOR TO the
14 Zoning Board ~~[[votes]]~~ VOTING on a petition. The cost of the mediation service shall be incurred by the
15 petitioner.

16 If no agreement is reached between the parties within 45 days, or at anytime the mediator deems any further
17 meetings futile, the Board shall continue with its proceedings or deliberations on the matter. If both parties
18 agree, mediation may be extended past 45 days to a period of time as agreed to by the parties.

19 Nothing in this section shall preclude the parties from meeting on their own at any time, with or without a
20 mediator, in an attempt to resolve their differences. It is the policy of the County to encourage applicants
21 and neighbors to have early discussions on proposed projects so that differences may be resolved prior to
22 the submission of an application.

23 (c) *Public Hearing Required.* The Zoning Board shall hold a hearing, UNLESS THE HEARING EXAMINER
24 HAS ALREADY HELD A HEARING on piecemeal map amendments and development plan petitions DURING
25 which parties TO THE CASE shall have an opportunity to be heard. The Zoning Board shall be prohibited
26 from holding meetings which include an opportunity for public testimony on any day on which Rosh
27 Hashanah, Yom Kippur, Eid Ul Fitr or Eid Ul Adha is observed. The Zoning Board shall not take final
28 action on piecemeal map amendments or development plan petitions until after:

29 (1) ~~[[the]]~~ ANY public hearing; AND

30 (2) THE PROCEDURES IN THIS SECTION AND SECTION 16.203A OF THIS SUBTITLE ARE
31 COMPLETE.

1 (d) *Advertising.* At least 30 days prior to the initial public hearing on the piecemeal map amendment or
2 development plan petitions, the petitioner, at its own expense, shall advertise the date, time, place and
3 subject matter of the petition in at least two newspapers of general circulation in Howard County.

4 (e) *Posting and Mail Notice:*

5 (1) At least 30 days prior to the initial public hearing on the piecemeal map amendment or
6 development plan petitions, the petitioner shall:

7 (i) Post the property which is the subject of the hearing with the date, time, place and
8 subject matter of the hearing. The sign shall include the address of Department of Planning and Zoning's
9 website. The poster shall be double-sided and at least 30 inches by 36 inches in size. The poster shall include
10 a three digit alphanumeric code, which would be used to identify the case. The alphanumeric code shall be
11 posted by the Department of Planning and Zoning in at least five-inch lettering in the top left corner of the
12 poster. The Department of Planning and Zoning shall determine the number of posters required and their
13 location and the petitioner shall bear the expense of posting. The Department of Planning and Zoning shall
14 supply the posters. The petitioner shall properly erect and maintain the posters; and

15 (ii) Send a certified letter to all persons whose property is adjoining to the property which
16 is the subject of the petition, according to the most recent State taxation and assessment records, notifying
17 those persons of the date, time, place and subject matter of the hearing in accordance with subsection
18 16.203(c)(7) and of this subtitle.

19 (2) Noncompliance with the mailing requirements of paragraph (1) of this subsection does not
20 constitute a basis for appeal or the setting aside of piecemeal zoning or development plan decisions.

21 (f) *Report of the Planning Board.* Petitions for piecemeal map amendments or development plan
22 approvals shall be submitted to the Planning Board. At least 30 days prior to a Planning Board meeting on
23 any piecemeal map amendment or development plan, the petitioner shall send notice of such meeting to the
24 relevant subscribers on the list maintained by the Department of Planning and Zoning in accordance with
25 subsection 16.145(b)(3). The Zoning Board shall consider the report of the Planning Board on such petitions
26 before the Zoning Board takes final action on them.

27 (g) *Department of Planning and Zoning's Findings and Analysis.* The Department of Planning and
28 Zoning shall transmit its findings and analysis concerning a petition for piecemeal map amendments or
29 development plans in a technical staff report to the Planning Board at least two weeks prior to the PLANNING
30 BOARD [[public]] meeting on a petition.

1 (h) *Questioning Departmental Findings.* At any time any individual may submit a question to the staff
2 of the Department of Planning and Zoning or related agencies concerning the findings and analysis of the
3 Department or related agencies. If a written response is requested, the question should be submitted in
4 writing to the Department or agency. If the written request is submitted at least 30 days prior to the Zoning
5 Board hearing, the Department or agency shall respond to such requests in writing and send a copy of the
6 response to the Zoning Board at least two weeks prior to the Zoning Board hearing. A response from a
7 related agency to a question concerning its findings and analysis may be considered by the Zoning Board
8 only if the response is in writing, unless a representative of the agency is present at the hearing to answer
9 questions.

10 (i) *Presentation of Departmental Findings and Analysis.* At least 30 days prior to a Zoning Board hearing,
11 the Board Administrator shall send a written notice to the Director of the Department of Planning and
12 Zoning as to the date, time, and place of the hearing. The Director of the Department of Planning and
13 Zoning, or the Director's Designee, shall attend a Zoning Board public hearing concerning a petition for
14 piecemeal map amendment or development plan and, under oath and subject to cross-examination,
15 summarize the Department's findings, explain the development process, and answer any related questions.

16 (j) *Findings.* Before the Zoning Board makes a decision, on any piecemeal map amendment or
17 development plan petition it shall make those findings of fact and conclusions of law required by law.

18 (k) *Documentation.*

19 (1) A petition for a piecemeal amendment of the zoning map may include documentation
20 describing the proposed development and use of the property under petition. The zoning regulations and
21 Zoning Board's rules of procedure shall govern the nature of the documentation and its review.

22 (2) A piecemeal map amendment shall be based on findings required by law. A piecemeal map
23 amendment petition may not be granted solely on the basis of documentation relating to proposed
24 development and use of the property.

25 (3) If the petition for a piecemeal map amendment includes documentation describing the
26 proposed development and use of the property under petition and the petition is granted:

27 (i) The property may be developed and used only in accordance with the documentation,
28 notwithstanding any provision requiring uniformity of zoning requirements; and

29 (ii) Unless the comprehensive zoning plan changes the zoning district of the
30 property, subsequent adoption of a comprehensive zoning plan shall not affect the requirement that the
31 property be used in accordance with the documentation.

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

3

Amendment 1 to Council Bill No. 77-2021

**BY: Deb Jung
and Christiana Rigby**

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 1

(This Amendment requires the Zoning Board to adopt Rules of Procedure for the Hearing Examiner in Zoning Board cases.)

1 On page 1:

2 • after line 21, insert:

3 “(3) THE ZONING BOARD SHALL ADOPT RULES OF PROCEDURE FOR THE HEARING EXAMINER IN
4 ZONING BOARD CASES.”

5 • in line 22, strike “(3)” and substitute “(4)”.

6

I certify this is a true copy of

Am 1 to CB 77-2021
passed on Dec 6, 2021

Michelle Dees
Council Administrator

Amendment 2 to Council Bill No. 77-2021

BY: Deb Jung

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 2

(This Amendment allows the Zoning Board by majority vote to decide to hear a case.)

1 On page 1:

2 • In line 23, strike "OR"

3 • in line 25, after "DISQUALIFICATION" insert:

4 “; OR

5 (III) THE ZONING BOARD BY MAJORITY VOTE DECIDES TO HEAR THE CASE”

6

7

I certify this is a true copy of
Am 2 to CB 77-2021
passed on 12-6-2021
Michelle Haerzon
Council Administrator

Amendment 3 to Council Bill No. 77-2021

BY: Deb Jung
and Christiana Rigby

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 3

(This Amendment adds requirements to the contents of the Hearing Examiner's report and specifies contents of the case record.)

1 On page 2, in line 1, after "fact" insert "SUMMARIES OF ARGUMENTS AND RESPECTIVE POSITIONS IN THE
2 CASE OR THEORY IN SUPPORT OF IT.".

3

4 After line 7, insert:

5 "(I) THE RECORD SHALL INCLUDE:

6 (I) ALL ITEMS LISTED IN SECTION 2.121(A) OF THE COUNTY CODE;

7 (II) MAPS;

8 (III) RECORDINGS OF THE HEARINGS HELD BY THE HEARING EXAMINER;

9 (IV) PRESENTATION BY THE DEPARTMENT OF PLANNING AND ZONING; AND

10 (V) ALL OTHER MATERIALS PROVIDED TO THE HEARING EXAMINER BY THE PETITIONER, THE
11 OPPOSITION, AND GOVERNMENT AGENCIES.".

12

13 In line 8, before "Following" insert "(2)".

I certify this is a true copy of

Am 3 to CB 77-2021

passed on 12-6-2021

Michelle Oseroff
Council Administrator

Amendment 4 to Council Bill No. 77-2021

BY: Deb Jung
and Christiana Rigby

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 4

(This Amendment reorganizes the criteria for a decision and final order; requires a certain presentation to the Zoning Board; specifies the time for a hearing of exceptions; and provides a limited exception to the requirement that the Zoning Board hold a certain public hearing.)

1 On page 2:

- 2 • in line 10, strike “; actions by the Zoning Board”.
- 3 • in line 11, strike “(I)”.
- 4 • in line 13, strike “(II)” and substitute “(2)”.
- 5 • in line 20, strike “(III)” and substitute “(3)”.
- 6

7 Beginning on page 2, strike from line 25 down through and including line 2 on page 3.

8

9 On page 3, after line 2, insert:

10 “(E) PRESENTATION TO THE ZONING BOARD.

11 THE REPORT, ALONG WITH THE RECORD, SHALL BE PRESENTED BY THE HEARING

12 EXAMINER TO THE ZONING BOARD . THE HEARING OF EXCEPTIONS TO THE REPORT SHALL FOLLOW

13 THE HEARING EXAMINER’S PRESENTATION.

14 (F) ACTIONS BY THE ZONING BOARD AT A MEETING OF THE ZONING BOARD.

15 EVERY DECISION AND FINAL ORDER IN A PIECEMEAL MAP AMENDMENT OR DEVELOPMENT PLAN

16 CASE SHALL BE IN WRITING, SIGNED BY A MAJORITY OF THE ENTIRE ZONING BOARD, ATTESTED BY

17 THE ZONING BOARD ADMINISTRATOR, AND SHALL BE ACCOMPANIED BY FINDINGS OF FACT AND

18 CONCLUSIONS OF LAW AND SHALL BE MADE A PART OF THE RECORD OF PROCEEDINGS. THE FINAL

19 ORDER OF THE ZONING BOARD DENYING OR GRANTING THE PETITION FOR A PIECEMEAL MAP

20 AMENDMENT, OR APPROVING OR DISAPPROVING A DEVELOPMENT PLAN, SHALL BE FILED WITH THE

21 DEPARTMENT OF PLANNING AND ZONING, WHICH SHALL MAINTAIN IT AS PART OF THE OFFICIAL

22 RECORDS OF THE COUNTY. THE ZONING BOARD MAY DECIDE BY MAJORITY VOTE TO REMAND THE

23 PETITION TO THE HEARING EXAMINER FOR ADDITIONAL TESTIMONY AND HEARING.”.

24

25 Also on page 3, in line 25, after “a hearing” insert: “, UNLESS THE HEARING EXAMINER HAS ALREADY

26 HELD A HEARING.”.

I certify this is a true copy of

Am 4 to CB 77-2021

passed on 12-6-2021

Michelle Dazzah
Council Administrator

Amendment 1 to Amendment 4 to Council Bill No. 77-2021

BY: Liz Walsh

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 1

(This Amendment clarifies that when the hearing examiner presents the report, it must be at a meeting of the Zoning Board.)

1 Insert in line 12, after "BOARD" insert "AT A MEETING OF THE ZONING BOARD".
2

I certify this is a true copy of
Am 1 to Am 4 to CB 77-2021
passed on . 12-6-2021
Michelle Spencer
Council Administrator

Amendment 2 to Amendment 4 to Council Bill No. 77-2021

BY: Liz Walsh

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 2

(This Amendment allows any member of the Zoning Board to remand a petition to the hearing examiner for additional testimony and hearing.)

1
2
3
4
5

Insert at line 8:

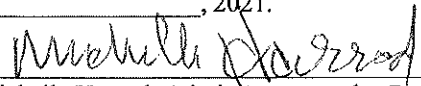
“On page 3, in line 1, strike “THE” and substitute “A MEMBER OF THE” and strike “BY MAJORITY VOTE”.”.

Failed

I certify this is a true copy of
Am 2 to Am 4 to CB 77-2021
~~passed on~~ Michelle D'Arred 12-6-2021
Michelle D'Arred
Council Administrator

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on Dec 13, 2021.



Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2021.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2021.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2021.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2021.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2021.

Michelle Harrod, Administrator to the County Council

Introduced 10-4-2021
Public Hearing 10-18-2021
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 16

Bill No. 77 -2021

Introduced by: Deb Jung and Christiana Righ

AN ACT to provide for a hearing examiner to hear certain matters in the jurisdiction of the Zoning Board; specifying the powers and duties of, and the procedures to be used by, the hearing examiner, including the requirement to issue a certain report; specifying the contents of the report; specifying the duties of the Zoning Board with respect to the actions of the hearing examiner; clarifying when certain mediation occurs; providing for the rights of the parties, including the right to file exceptions, in matters heard by the hearing examiner; and generally relating to Piecemeal map amendments and development plan approvals.

Introduced and read first time October 4, 2021. Ordered posted and hearing scheduled.
By order Michelle Harrod
Michelle R. Harrod, Administrator

Having been posted and notice of time & place of hearing, title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on October 6, 2021.
By order Michelle Harrod
Michelle R. Harrod, Administrator

This Bill was read the third time on _____, 2021 and Passed _____, Passed with amendments _____, Failed _____.
By order _____
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this _____ day of _____, 2021 at _____ a.m./p.m.
By order _____
Michelle R. Harrod, Administrator

Approved/Vetoed by the County Executive _____, 2021

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; Text in small capitals indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

Tabled 11-1-2021 Michelle Harrod

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2 *Code is hereby amended as follows:*

3 *By amending*

4 *Title 16 - Planning, zoning and subdivisions and land development regulations.*

5 *Subtitle 2. - Zoning*

6 *Sec. 16.203A. Hearing Examiner*

7 *Sec. 16.204. Piecemeal map amendments and development plan approvals.*

8
9

10 **HOWARD COUNTY CODE**

11 **SEC. 16.203A. – HEARING EXAMINER.**

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13 (1) EXCEPT AS SET FORTH IN SECTION 16.203A(A)(3), A HEARING EXAMINER SHALL FIRST
14 HEAR THE PETITIONS THAT ARE AUTHORIZED TO BE HEARD BY THE ZONING BOARD UNDER SECTION
15 16.204 OF THIS SUBTITLE.

16 (2) A HEARING UNDER THIS SECTION SHALL BE HELD IN THE SAME MANNER AS A HEARING
17 THAT THE ZONING BOARD HOLDS UNDER SECTIONS 16.204 AND 16.206 OF THIS SUBTITLE AND THE
18 HEARING EXAMINER SHALL NOT ISSUE A DECISION BUT SHALL ISSUE A REPORT. WHEN THE HEARING
19 EXAMINER HOLDS A HEARING UNDER THIS SECTION, THE HEARING SHALL PROCEED AS SET FORTH IN
20 SECTIONS 16.204 AND 16.206 OF THIS SUBTITLE AS IF THE TERM “ZONING BOARD” OR “CHAIRPERSON”
21 INCLUDES “HEARING EXAMINER.”

22 (3) THE ZONING BOARD SHALL HEAR AND DECIDE A CASE IF:

23 (i) THE HEARING EXAMINER POSITION IS VACANT; OR

24 (ii) THE ZONING BOARD DETERMINES THAT THE HEARING EXAMINER IS UNABLE TO
25 HEAR THE CASE BECAUSE OF A CONFLICT OF INTEREST OR OTHER DISQUALIFICATION.

26 (B) *REPORT*

27 (1) (i) THE HEARING EXAMINER SHALL ISSUE A REPORT ON EACH PETITION HEARD BY
28 THE HEARING EXAMINER.

29 (ii) THE HEARING EXAMINER SHALL ISSUE THE REPORT WITHIN 60 DAYS AFTER THE
30 CONCLUSION OF THE HEARING UNLESS THE ZONING BOARD SPECIFIES A DIFFERENT TIME.

1 (2) THE REPORT SHALL INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

2 (3) THE REPORT IS NOT AN ORDER OR FINAL ACTION OF THE ZONING BOARD.

3 (4) THE REPORT SHALL BE SIGNED BY THE HEARING EXAMINER AND SENT TO THE ZONING
4 BOARD ADMINISTRATOR TO BE DISTRIBUTED TO THE MEMBERS OF THE ZONING BOARD, EACH PARTY TO
5 THE CASE, AND POSTED ON THE ZONING BOARD'S WEBSITE. THE REPORT SHALL BE DEEMED ISSUED ON
6 THE DATE THAT THE REPORT IS SIGNED BY THE HEARING EXAMINER.

7 (C) *RECORD*

8 FOLLOWING THE CLOSE OF THE RECORD, THE HEARING EXAMINER SHALL SEND THE RECORD TO
9 THE ZONING BOARD ADMINISTRATOR TO BE DISTRIBUTED TO THE MEMBERS OF THE ZONING BOARD.

10 (D) *EXCEPTIONS; ACTIONS BY THE ZONING BOARD.*

11 (1) (i) AFTER A HEARING EXAMINER ISSUES A REPORT, A PARTY MAY SUBMIT TO THE
12 ZONING BOARD EXCEPTIONS TO THE REPORT.

13 (ii) EXCEPTIONS SHALL BE IN WRITING AND SHALL BE FILED WITH THE ZONING
14 BOARD WITHIN 20 BUSINESS DAYS AFTER THE HEARING EXAMINER'S REPORT IS ISSUED. THE PARTY
15 FILING EXCEPTIONS SHALL SEND THE EXCEPTIONS TO THE ZONING BOARD ADMINISTRATOR AND ALL
16 OTHER PARTIES IN THE CASE BY BOTH EMAIL AND FIRST-CLASS MAIL, POSTAGE PAID. THE EXCEPTIONS
17 SHALL SPECIFY IN DETAIL THOSE ITEMS TO WHICH THE PARTY EXCEPTS AND THE REASONS WHY THE
18 PARTY EXCEPTS. ANY PARTY MAY FILE A WRITTEN RESPONSE TO ANY OTHER PARTY'S EXCEPTIONS
19 WITHIN 20 BUSINESS DAYS OF THE FILING OF ANY EXCEPTIONS.

20 (iii) ON THE FILING OF EXCEPTIONS, THE ZONING BOARD SHALL SCHEDULE AN ORAL
21 ARGUMENT ON THE EXCEPTIONS IN A TIMELY MANNER. THE ORAL ARGUMENT IS LIMITED TO THOSE
22 MATTERS TO WHICH EXCEPTIONS HAVE BEEN TAKEN. EACH PARTY SHALL BE LIMITED TO 30 MINUTES
23 TOTAL OF ORAL ARGUMENT FOR ALL EXCEPTIONS FILED BY THAT PARTY. THE ZONING BOARD MAY
24 CHOOSE TO TAKE EVIDENCE ON AN EXCEPTION.

25 (2) EVERY DECISION AND FINAL ORDER IN A PIECEMEAL MAP AMENDMENT OR DEVELOPMENT
26 PLAN CASE SHALL BE IN WRITING, SIGNED BY A MAJORITY OF THE ENTIRE ZONING BOARD, ATTESTED BY
27 THE ZONING BOARD ADMINISTRATOR, AND SHALL BE ACCOMPANIED BY FINDINGS OF FACT AND
28 CONCLUSIONS OF LAW AND SHALL BE MADE A PART OF THE RECORD OF PROCEEDINGS. THE FINAL ORDER
29 OF THE ZONING BOARD DENYING OR GRANTING THE PETITION FOR A PIECEMEAL MAP AMENDMENT, OR
30 APPROVING OR DISAPPROVING A DEVELOPMENT PLAN, SHALL BE FILED WITH THE DEPARTMENT OF
31 PLANNING AND ZONING, WHICH SHALL MAINTAIN IT AS PART OF THE OFFICIAL RECORDS OF THE COUNTY.

1 THE ZONING BOARD MAY DECIDE BY MAJORITY VOTE TO REMAND THE PETITION TO THE HEARING
2 EXAMINER FOR ADDITIONAL TESTIMONY AND HEARING.

3 Sec. 16.204. - Piecemeal map amendments and development plan approvals.

4 (a) *Zoning Board.* The Zoning Board may exercise the Zoning Authority delegated to it by this subtitle
5 to make decisions on piecemeal map amendments and development plans in pursuance of a petition filed
6 in accordance with section 16.205 of this subtitle and shall establish procedures for doing so.

7 (b) *Mediation.* The Zoning Board may refer an applicant and other persons affected by a pending
8 application, other than piecemeal map amendment cases based on the change/mistake rule as established
9 by Maryland Case Law, to the Mediation and Conflict Resolution Center, Inc., of Howard County or a
10 conflict resolution or mediation service which has been deemed acceptable by the Board. The purpose of
11 such referral shall be to resolve conflicts between these parties, but the results thereof shall not bind the
12 Board to any result. Any resolution that is agreed upon by both parties shall be subject to findings of the
13 Board required by law. Petition approval may not be granted solely on the basis of mediation resolution.

14 A referral may be made either before or after a public hearing on a pending petition decision, but only after
15 an application is deemed complete. ANY MEDIATION ~~[[Mediation]]~~ shall ~~[[not]]~~ occur ~~[[after]]~~ PRIOR TO the
16 Zoning Board ~~[[votes]]~~ VOTING on a petition. The cost of the mediation service shall be incurred by the
17 petitioner.

18 If no agreement is reached between the parties within 45 days, or at anytime the mediator deems any further
19 meetings futile, the Board shall continue with its proceedings or deliberations on the matter. If both parties
20 agree, mediation may be extended past 45 days to a period of time as agreed to by the parties.

21 Nothing in this section shall preclude the parties from meeting on their own at any time, with or without a
22 mediator, in an attempt to resolve their differences. It is the policy of the County to encourage applicants
23 and neighbors to have early discussions on proposed projects so that differences may be resolved prior to
24 the submission of an application.

25 (c) *Public Hearing Required.* The Zoning Board shall hold a hearing on piecemeal map amendments and
26 development plan petitions DURING which parties TO THE CASE shall have an opportunity to be heard. The
27 Zoning Board shall be prohibited from holding meetings which include an opportunity for public testimony
28 on any day on which Rosh Hashanah, Yom Kippur, Eid Ul Fitr or Eid Ul Adha is observed. The Zoning
29 Board shall not take final action on piecemeal map amendments or development plan petitions until after:

- 30 (1) ~~[[the]]~~ ANY public hearing; AND

1 (2) THE PROCEDURES IN THIS SECTION AND SECTION 16.203A OF THIS SUBTITLE ARE
2 COMPLETE.

3 (d) *Advertising.* At least 30 days prior to the initial public hearing on the piecemeal map amendment or
4 development plan petitions, the petitioner, at its own expense, shall advertise the date, time, place and
5 subject matter of the petition in at least two newspapers of general circulation in Howard County.

6 (e) *Posting and Mail Notice:*

7 (1) At least 30 days prior to the initial public hearing on the piecemeal map amendment or
8 development plan petitions, the petitioner shall:

9 (i) Post the property which is the subject of the hearing with the date, time, place and
10 subject matter of the hearing. The sign shall include the address of Department of Planning and Zoning's
11 website. The poster shall be double-sided and at least 30 inches by 36 inches in size. The poster shall include
12 a three digit alphanumeric code, which would be used to identify the case. The alphanumeric code shall be
13 posted by the Department of Planning and Zoning in at least five-inch lettering in the top left corner of the
14 poster. The Department of Planning and Zoning shall determine the number of posters required and their
15 location and the petitioner shall bear the expense of posting. The Department of Planning and Zoning shall
16 supply the posters. The petitioner shall properly erect and maintain the posters; and

17 (ii) Send a certified letter to all persons whose property is adjoining to the property which
18 is the subject of the petition, according to the most recent State taxation and assessment records, notifying
19 those persons of the date, time, place and subject matter of the hearing in accordance with subsection
20 16.203(c)(7) and of this subtitle.

21 (2) Noncompliance with the mailing requirements of paragraph (1) of this subsection does not
22 constitute a basis for appeal or the setting aside of piecemeal zoning or development plan decisions.

23 (f) *Report of the Planning Board.* Petitions for piecemeal map amendments or development plan
24 approvals shall be submitted to the Planning Board. At least 30 days prior to a Planning Board meeting on
25 any piecemeal map amendment or development plan, the petitioner shall send notice of such meeting to the
26 relevant subscribers on the list maintained by the Department of Planning and Zoning in accordance with
27 subsection 16.145(b)(3). The Zoning Board shall consider the report of the Planning Board on such petitions
28 before the Zoning Board takes final action on them.

29 (g) *Department of Planning and Zoning's Findings and Analysis.* The Department of Planning and
30 Zoning shall transmit its findings and analysis concerning a petition for piecemeal map amendments or

1 development plans in a technical staff report to the Planning Board at least two weeks prior to the PLANNING
2 BOARD [[public]] meeting on a petition.

3 (h) *Questioning Departmental Findings.* At any time any individual may submit a question to the staff
4 of the Department of Planning and Zoning or related agencies concerning the findings and analysis of the
5 Department or related agencies. If a written response is requested, the question should be submitted in
6 writing to the Department or agency. If the written request is submitted at least 30 days prior to the Zoning
7 Board hearing, the Department or agency shall respond to such requests in writing and send a copy of the
8 response to the Zoning Board at least two weeks prior to the Zoning Board hearing. A response from a
9 related agency to a question concerning its findings and analysis may be considered by the Zoning Board
10 only if the response is in writing, unless a representative of the agency is present at the hearing to answer
11 questions.

12 (i) *Presentation of Departmental Findings and Analysis.* At least 30 days prior to a Zoning Board hearing,
13 the Board Administrator shall send a written notice to the Director of the Department of Planning and
14 Zoning as to the date, time, and place of the hearing. The Director of the Department of Planning and
15 Zoning, or the Director's Designee, shall attend a Zoning Board public hearing concerning a petition for
16 piecemeal map amendment or development plan and, under oath and subject to cross-examination,
17 summarize the Department's findings, explain the development process, and answer any related questions.

18 (j) *Findings.* Before the Zoning Board makes a decision, on any piecemeal map amendment or
19 development plan petition it shall make those findings of fact and conclusions of law required by law.

20 (k) *Documentation.*

21 (1) A petition for a piecemeal amendment of the zoning map may include documentation
22 describing the proposed development and use of the property under petition. The zoning regulations and
23 Zoning Board's rules of procedure shall govern the nature of the documentation and its review.

24 (2) A piecemeal map amendment shall be based on findings required by law. A piecemeal map
25 amendment petition may not be granted solely on the basis of documentation relating to proposed
26 development and use of the property.

27 (3) If the petition for a piecemeal map amendment includes documentation describing the
28 proposed development and use of the property under petition and the petition is granted:

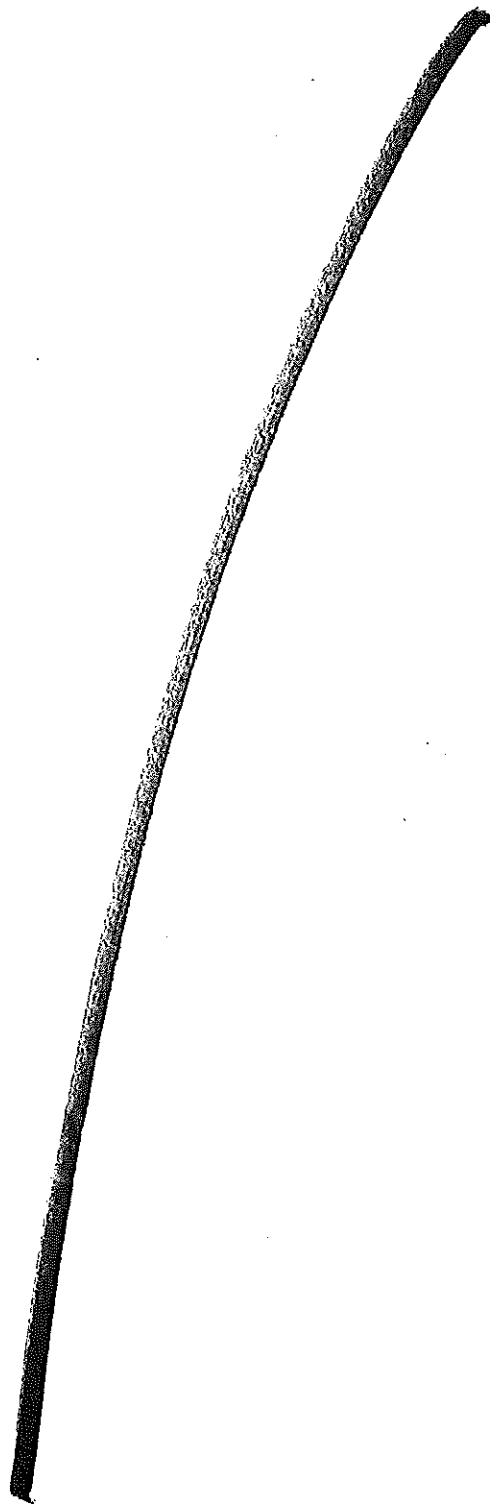
29 (i) The property may be developed and used only in accordance with the documentation,
30 notwithstanding any provision requiring uniformity of zoning requirements; and

1 (ii) Unless the comprehensive zoning plan changes the zoning district of the
2 property, subsequent adoption of a comprehensive zoning plan shall not affect the requirement that the
3 property be used in accordance with the documentation.

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

6





Amendment 4 to Council Bill No. 77-2021

BY: Deb Jung
and Christiana Rigby

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 4

(This Amendment reorganizes the criteria for a decision and final order, requires a certain presentation to the Zoning Board; specifies the time for a hearing of exceptions; and provides a limited exception to the requirement that the Zoning Board hold a certain public hearing.)

1 On page 2:

- 2 • in line 10, strike “; actions by the Zoning Board”.
- 3 • in line 11, strike “(I)”.
- 4 • in line 13, strike “(II)” and substitute “(2)”.
- 5 • in line 20, strike “(III)” and substitute “(3)”.
- 6

7 Beginning on page 2, strike from line 25 down through and including line 2 on page 3.

8

9 On page 3, after line 2, insert:

10 “(E) PRESENTATION TO THE ZONING BOARD.”

11 THE REPORT, ALONG WITH THE RECORD, SHALL BE PRESENTED BY THE HEARING

12 EXAMINER TO THE ZONING BOARD. THE HEARING OF EXCEPTIONS TO THE REPORT SHALL FOLLOW

13 THE HEARING EXAMINER’S PRESENTATION.

14 “(F) ACTIONS BY THE ZONING BOARD.”

15 EVERY DECISION AND FINAL ORDER IN A PIECEMEAL MAP AMENDMENT OR DEVELOPMENT PLAN

16 CASE SHALL BE IN WRITING, SIGNED BY A MAJORITY OF THE ENTIRE ZONING BOARD, ATTESTED BY

17 THE ZONING BOARD ADMINISTRATOR, AND SHALL BE ACCOMPANIED BY FINDINGS OF FACT AND

18 CONCLUSIONS OF LAW AND SHALL BE MADE A PART OF THE RECORD OF PROCEEDINGS. THE FINAL

19 ORDER OF THE ZONING BOARD DENYING OR GRANTING THE PETITION FOR A PIECEMEAL MAP

20 AMENDMENT, OR APPROVING OR DISAPPROVING A DEVELOPMENT PLAN, SHALL BE FILED WITH THE

21 DEPARTMENT OF PLANNING AND ZONING, WHICH SHALL MAINTAIN IT AS PART OF THE OFFICIAL

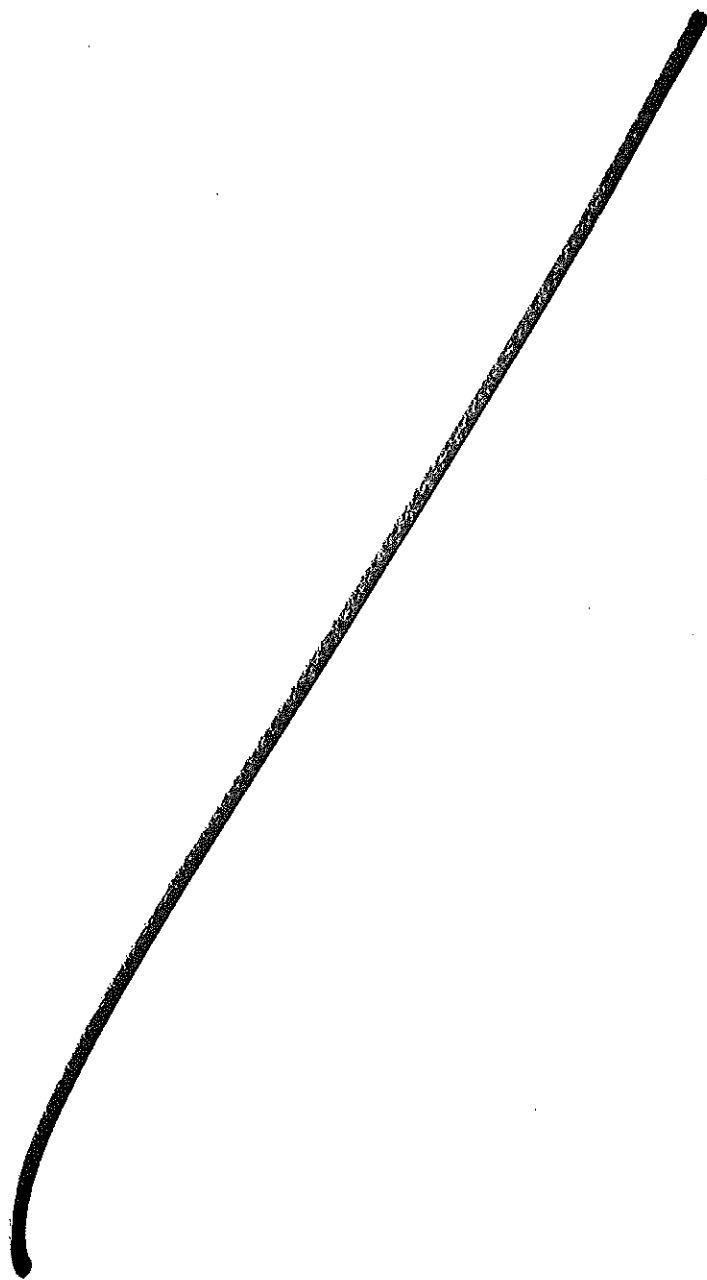
22 RECORDS OF THE COUNTY. THE ZONING BOARD MAY DECIDE BY MAJORITY VOTE TO REMAND THE

23 PETITION TO THE HEARING EXAMINER FOR ADDITIONAL TESTIMONY AND HEARING.”

24

25 Also on page 3, in line 25, after “a hearing” insert: “, UNLESS THE HEARING EXAMINER HAS ALREADY

26 HELD A HEARING”.



Amendment 1 to Council Bill No. 77-2021

**BY: Deb Jung
and Christiana Rigby**

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 1

(This Amendment requires the Zoning Board to adopt Rules of Procedure for the Hearing Examiner in Zoning Board cases.)

1 On page 1:

2 • after line 21, insert:

3 “(3) THE ZONING BOARD SHALL ADOPT RULES OF PROCEDURE FOR THE HEARING EXAMINER IN
4 ZONING BOARD CASES.”

5 • in line 22, strike “(3)” and substitute “(4)”.

6

Amendment 2 to Council Bill No. 77-2021

BY: Deb Jung

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 2

(This Amendment allows the Zoning Board by majority vote to decide to hear a case.)

1 On page 1:

- 2 • In line 23, strike "OR"
3 • in line 25, after "DISQUALIFICATION" insert:

4 “; OR

5 (III) THE ZONING BOARD BY MAJORITY VOTE DECIDES TO HEAR THE CASE”

6

7

Amendment 3 to Council Bill No. 77-2021

BY: Deb Jung
and Christiana Rigby

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 3

(This Amendment adds requirements to the contents of the Hearing Examiner's report and specifies contents of the case record.)

1 On page 2, in line 1, after "fact" insert ", SUMMARIES OF ARGUMENTS AND RESPECTIVE POSITIONS IN THE
2 CASE OR THEORY IN SUPPORT OF IT.".

3

4 After line 7, insert:

5 "(1) THE RECORD SHALL INCLUDE:

6 (I) ALL ITEMS LISTED IN SECTION 2.121(A) OF THE COUNTY CODE;

7 (II) MAPS;

8 (III) RECORDINGS OF THE HEARINGS HELD BY THE HEARING EXAMINER;

9 (IV) PRESENTATION BY THE DEPARTMENT OF PLANNING AND ZONING; AND

10 (V) ALL OTHER MATERIALS PROVIDED TO THE HEARING EXAMINER BY THE PETITIONER, THE
11 OPPOSITION, AND GOVERNMENT AGENCIES.".

12

13 In line 8, before "Following" insert "(2)".

Amendment 1 to Amendment 4 to Council Bill No. 77-2021

BY: Liz Walsh

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 1

(This Amendment clarifies that when the hearing examiner presents the report, it must be at a meeting of the Zoning Board.)

1 Insert in line 12, after "BOARD" insert "AT A MEETING OF THE ZONING BOARD".
2

Amendment 2 to Amendment 4 to Council Bill No. 77-2021

BY: Liz Walsh

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 2

(This Amendment allows any member of the Zoning Board to remand a petition to the hearing examiner for additional testimony and hearing.)

1 Insert at line 8:

2

3 “On page 3, in line 1, strike “THE” and substitute “A MEMBER OF THE” and strike “BY MAJORITY

4 VOTE”.”

5

Amendment 4 to Council Bill No. 77-2021

BY: Deb Jung
and Christiana Rigby

Legislative Day No. 19

Date: December 6, 2021

Amendment No. 4

(This Amendment reorganizes the criteria for a decision and final order; requires a certain presentation to the Zoning Board; specifies the time for a hearing of exceptions; and provides a limited exception to the requirement that the Zoning Board hold a certain public hearing.)

1 On page 2:

- 2 • in line 10, strike “; actions by the Zoning Board”.
- 3 • in line 11, strike “(I)”.
- 4 • in line 13, strike “(II)” and substitute “(2)”.
- 5 • in line 20, strike “(III)” and substitute “(3)”.

6
7 Beginning on page 2, strike from line 25 down through and including line 2 on page 3.

8
9 On page 3, after line 2, insert:

10 “(E) PRESENTATION TO THE ZONING BOARD.

11 THE REPORT, ALONG WITH THE RECORD, SHALL BE PRESENTED BY THE HEARING
12 EXAMINER TO THE ZONING BOARD. THE HEARING OF EXCEPTIONS TO THE REPORT SHALL FOLLOW
13 THE HEARING EXAMINER’S PRESENTATION.

14 (F) ACTIONS BY THE ZONING BOARD.

15 EVERY DECISION AND FINAL ORDER IN A PIECEMEAL MAP AMENDMENT OR DEVELOPMENT PLAN
16 CASE SHALL BE IN WRITING, SIGNED BY A MAJORITY OF THE ENTIRE ZONING BOARD, ATTESTED BY
17 THE ZONING BOARD ADMINISTRATOR, AND SHALL BE ACCOMPANIED BY FINDINGS OF FACT AND
18 CONCLUSIONS OF LAW AND SHALL BE MADE A PART OF THE RECORD OF PROCEEDINGS. THE FINAL
19 ORDER OF THE ZONING BOARD DENYING OR GRANTING THE PETITION FOR A PIECEMEAL MAP
20 AMENDMENT, OR APPROVING OR DISAPPROVING A DEVELOPMENT PLAN, SHALL BE FILED WITH THE
21 DEPARTMENT OF PLANNING AND ZONING, WHICH SHALL MAINTAIN IT AS PART OF THE OFFICIAL
22 RECORDS OF THE COUNTY. THE ZONING BOARD MAY DECIDE BY MAJORITY VOTE TO REMAND THE
23 PETITION TO THE HEARING EXAMINER FOR ADDITIONAL TESTIMONY AND HEARING.”.

24
25 Also on page 3, in line 25, after “a hearing” insert: “, UNLESS THE HEARING EXAMINER HAS ALREADY
26 HELD A HEARING,”.

Office of the County Auditor
Auditor's Analysis

Council Bill No. 77-2021

Introduced: October 4, 2021

Auditor: Michael A. Martin

Fiscal Impact:

The fiscal impact of this legislation cannot be determined at this time as it depends on the number of Zoning Board hearings that will be held in the future as well as the nature of each hearing – more complex cases will require extensive review and examination, which may result in more billable hours paid to the County's Hearing Examiner.

According to the sponsors, an additional Hearing Examiner will not be required as a result of this legislation and, until the Council makes a final decision, the two existing Hearing Examiners will fulfill the requirements proposed in this bill. It was also indicated that no additional costs for support staff will result from this legislation.

There was a funded vacancy in the County Council's FY 2022 Approved Operating Budget for a full-time Principal Attorney I with a budget of \$54,800 for four months. The County Council has not yet decided how the remaining funds will be utilized.

According to the Hearing Examiners' contracts, they are paid \$200 per hour and are reimbursed for travel costs.

For comparison purposes, **Attachment A** details the number of hours worked and compensation earned for each Hearing Examiner during FY 2021 as it relates to Board of Appeals' cases.

Purpose:

This legislation would allow for the Hearing Examiner to hear all petitions prior to the Zoning Board. Within 60 days after the conclusion of the hearing, the Hearing Examiner will prepare and issue a report which will be sent to all involved parties and posted on the Zoning Board's website.

If the Hearing Examiner position is vacant or they are unable to hear the petition and prepare a report, then the Zoning Board will hear the petition themselves before issuing a decision.

There will be a process for any involved party to submit exceptions to the report issued by the Hearing Examiner within 20 business days of the report being issued.

Every decision and final order in a piecemeal map amendment or development plan case will be in writing and:

- Signed by a majority of the Zoning Board,
- Attested to by the Zoning Board Administrator, and
- Accompanied by the findings gathered by the Hearing Examiner.

The Zoning Board can choose to remand the petition to the Hearing Examiner for additional testimony and hearing should it be decided by a majority vote.

Other Comments:

Both Hearing Examiners have contracts through June 30, 2022, at which time a renewal or amendment to their existing agreements will be required.

Attachment A

Joyce Nichols - Board of Appeals Hearing Examiner		
FY 2021 Contracted Services/Compensation		
Month	Hours Worked	Amount Earned
July 2020	12	\$ 2,415
August 2020	56	11,144
September 2020	97	19,383
October 2020	35	7,030
November 2020	40	7,935
December 2020	4	800
January 2021	13	2,567
February 2021	29	5,715
March 2021	5	970
April 2021	5	1,008
May 2021	42	8,380
June 2021	81	16,116
Total	419	83,463
Average	35	6,955

Katherine Taylor - Board of Appeals Hearing Examiner		
FY 2021 Contracted Services/Compensation		
Month	Hours Worked	Amount Earned
July 2020	17	\$ 3,354
August 2020	8	1,601
September 2020	29	5,881
October 2020	14	2,835
November 2020	11	2,207
December 2020	34	6,841
January 2021	-	-
February 2021	4	749
March 2021	18	3,500
April 2021	6	1,241
May 2021	-	-
June 2021	28	5,568
Total	169	33,777
Average	14	2,815

CB77-2021

Sayers, Margery

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

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

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

Joan Lancos

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.

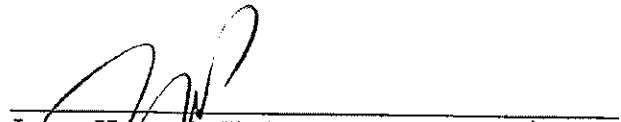
Upon review of both Motions to Dismiss Appeal and for the reasons set forth in the Motions, it is this 13th day of December 2018, by the Howard County Board of Appeals, hereby

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

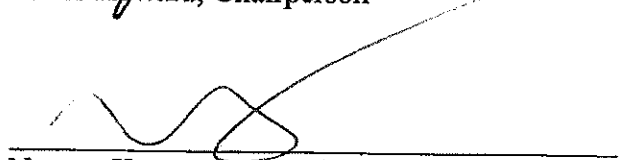
ATTEST:

HOWARD COUNTY BOARD OF APPEALS


Robin Regner, Secretary

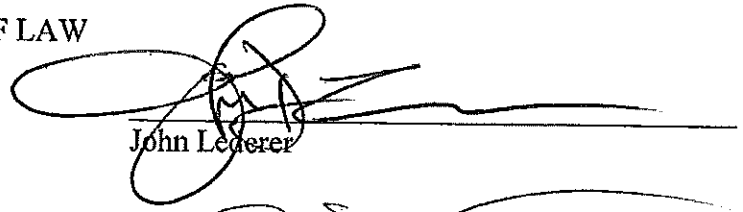

James Howard, Chairperson

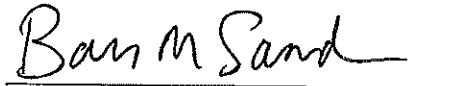
APPROVED AS TO FORM:



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

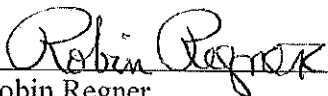
As Board of Appeals Case No. 718-D has been on the Unscheduled Docket since June 9, 2016, pursuant to a letter dated June 9, 2016 from the Hearing Examiner to Sang Oh, attorney for the Appellant, and in accordance with Section 100.I.3. of the Howard County Zoning Regulations which states:

"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:

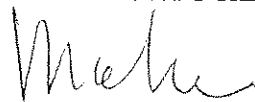
That the above-captioned Board of Appeals Case No. 718-D, Two Farms, Inc., is hereby DISMISSED.

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



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

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

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

County Council regarding CB77-2021 to express the organization's
(bill or resolution number)

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

Printed Name: Stu Kohn

Signature: _____

Date: 14 October 2021

Organization: Howard County Citizens Association

Organization Address: Ellicott City, MD

Ellicott City, MD

Number of Members: 500

Name of Chair/President: Stu Kohn

*This form can be submitted electronically via email to
councilmail@howardcountymd.gov no later than 2 hours prior to the start of the
Public Hearing.*



HCCA

Howard County Citizens Association

Since 1961...

The Voice Of The People of Howard County

Date: 18 October 2021

Subject: HCCA Appreciates Introduction of CB77-2021 But Has Concerns

Good Evening. I am Stu Kohn from Laurel and as President of the Howard County Citizens Association, HCCA I am speaking on their behalf. HCCA very much appreciates that Councilmembers Deb Jung and Christina Rigby are zoning in and undoubtedly recognize by introducing CB77-2021 the current zoning procedures requires a drastic overhaul. We congratulate you both. If you believe the process will be improved with the passage of this Bill then perhaps it's worth a try as the current situation is deplorable. It is BS and in this case we are hoping that BS will mean a Better System.

Having the Hearing Examiner preside over such cases is debatable as to its merits. We only wish the Zoning Board Members will do their job and provide all of us the right of Due Process. Some major examples are as follows:

- All Motions when filed need to be decided prior to closing given by all parties,
- Not have the County Executive interfere to allow any government official that the Zoning Board deems necessary to gather all the facts.
- When allowing a modified plan by the Petitioner which the opposition has not commented on after the Zoning Board declared the case "Closed".
- Not providing a full explanation as to the outcome of motions.
- Potentially permitting additional witnesses to testify when the Petition is not approved and perhaps not allowing additional cross-examination by interested parties.
- Having a lengthy period of time between hearings.
- Not having the Zoning Counsel present when applicable which had this right been allowed then perhaps the major problems would not have been prevalent.

Will the aforementioned problems we all have experienced much to our chagrin be a thing of the past if CB77-2021 is passed? Will the Zoning Counsel be present? If not -- why not as it is not just for "Change and Mistake cases" especially when referring to the Zoning Board portion of the County website. It states otherwise and doesn't even mention "Change and Mistake." You as Zoning Board members chose to ignore it and never made a decision. You only provided us a seminar and never responded. This is plain wrong!

Perhaps had CB41-2019 introduced by Councilman David Yungmann and Councilman Opel Jones voting in favor had passed the zoning process might have been better. This Bill was to establish a Community Case Zoning Navigator to provide an impartial process for assistance to residents, property owners, and petitioners, community stakeholders, to encourage participation and confidence and better understanding of the county land use process.

Please refer to page 3, lines 7 thru 24 regarding Mediation. We strongly suggest you delete this section and completely eliminate from all references in the zoning regulations. 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. On the first day of Mediation the Mediators at the Howard County Community College asked why we were even present. This said it all! By the way why should the Petitioner be required to pay the fees?

Ultimately many of us have been saying for years the Zoning Board and County Council should not be represented by the same individuals. They should be separate. There is a perception of a conflict of interest due to campaign contributions. In addition there is the ex-parte communication problem.

Michael Jordan stated. "I can accept failure, everyone fails at something. But I can't accept not trying." Yes – our zoning process has indeed failed, but at least you recognize this and yes – something needs to be done. We do appreciate you trying to resolve the matter. It should be a top priority to once and for all resolve in order to achieve the due process we very much expect.

Thank you.



Stu Kohn
HCCA President

Sayers, Margery

From: Christopher J. Alleva <jens151@yahoo.com>
Sent: Tuesday, October 19, 2021 12:13 AM
To: CouncilMail
Cc: Williams, China; Royalty, Wendy; Knight, Karen; Gelwicks, Colette
Subject: Alleva Testimony CB77-2021
Attachments: Board of Appeals Rules of Procedure 2000 Downloaded 10-18-2021.pdf; CB 77-2021 Legislative History Hearing Examiner Article 502.pdf

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

Dear Chair Walsh:

Please find the documents I referred to in my testimony regarding CB77-2021, a bill to sub-delegate and designate the Hearing Examiner of Howard County to conduct the hearings of certain Zoning Petitions under aegis of the Zoning Board.

As I testified, the bill as currently written conflicts with sections 502 and 501.(b) of the Charter. 502 of the Howard County charter establishes the Hearing Examiner's authority which refers the Board of Appeals Powers and Functions under 501.b that excludes zoning maps amendments among other things.

I don't see how the proposed bill resolves this exclusion as it is a Charter provision. Perhaps better minds can overcome this dilemma. I would also note, the 502.b was never amended to reflect the repeal and replacement of Article 25A of the MD code with 10-305 of the local government article.

Legislative History

Section 501, Board of Appeals was amended in 2000 under CR103 and in 2012 under CR100. CR103 was an extensive amendment that repealed detailed provisions regarding de novo proceedings that create conflicting rules for administrative appeals. CR100 was limited to the correction of a single MD code reference. The exclusion of zoning matters has been from the BoA powers has never been undisturbed to my knowledge.

Board of Appeals Rules of Procedure are out of date. Last update was before July 2000, perhaps, in 1990.

The CR103-2000 and CR100-2012 amendments were never updated in the charter appended to the rules.

I notified the Department of Planning and Zoning and the Board of Appeals that their rules have errors and are out of date several years ago and requested them to fix it. They defiantly refused without explanation. I will notify them again. It's a good thing the ISO is not reviewing their attentiveness. County residents probably could not get fire insurance.

Legislative Intertextuality

Intertextuality is the relationship between texts. It is critical to provide that the various sections of the County Code, the Zoning Regulations, Rules of Procedure, the Charter, the MD Code, the MD Constitution and the U.S. Constitution have intertextual integrity to avoid misinterpretation and misapplication of the law.

When drafting legislation, one must always be mindful of intertextuality as very few provisions are independent clauses.

I support the Bill

If the conflicts can be satisfactorily resolved, I categorically support this Bill.

HOWARD COUNTY CODE

RULES OF PROCEDURE OF THE BOARD OF APPEALS

SECTION 2.200. GENERAL.

These rules are in addition to the requirements of section 501 of the Howard County Charter; subtitle 3, "Board of Appeals," of title 16 of the Howard County Code; and the Howard County Zoning Regulations. For further information and assistance, applicants may consult the Department of Planning and Zoning. [See Appendices A and B for cross-referenced requirements.]

SECTION 2.201. ORGANIZATION.

(a) Chairperson; Vice Chairperson. Each January the members shall designate one member to be a chairperson and one member to be a vice chairperson. The vice chairperson shall assume the chairperson's duties if the chairperson is absent or incapacitated. The chairperson shall schedule hearings and meetings, issue summonses and subpoenas, and rule on procedural matters.

(b) Quorum. A majority of the Board of Appeals, i.e. at least three members, constitutes a quorum. A quorum shall be present before the Board can hold a meeting or hearing.

(c) Voting. The same members of the Board who were present at the hearing shall make the decision on the case, provided that any member who was absent during any portion of the hearing or who was appointed after the hearing commenced shall be considered present for voting purposes and may vote if the member certifies in writing that the member reviewed all of the evidence submitted and listened to a recording of the portion of the hearing for which the member was not present. A decision shall have the concurrence of the majority of all members of the Board. A member who was absent during any portion of the hearing or who was appointed after the hearing commenced shall vote as provided in this paragraph if necessary to achieve the number of votes needed to render a decision unless the member recuses himself for cause. Failure to achieve the necessary affirmative votes shall result in the dismissal of the case.

(d) Clerk of the Board. The Director of Planning and Zoning or the Director's designee shall be the clerk of the Board of Appeals. The clerk of the Board shall be the custodian of the records of proceedings, shall accept petitions, motions and correspondence to the Board, and shall maintain the docket in each case.

(e) Secretary. The Board of Appeals may appoint a secretary who shall record the proceedings, draft and maintain the minutes of Board meetings, and perform other secretarial duties as assigned by the Board.

(f) Administrative Assistant. The Board may appoint an administrative assistant who shall perform administrative duties as assigned by the Board.

(g) Legal Advisor. The County Solicitor shall be the legal advisor and draftsman for the Board of Appeals. The County Solicitor shall attend all meetings of the Board unless excused

by the chairperson. The County Solicitor shall provide advice and assistance to any member desiring to publish an independent or minority opinion. With the approval of the chairperson, the County Solicitor may delegate these duties to an Assistant County Solicitor.

SECTION 2.202. PETITIONS.

(a) Form and Contents of Petitions. The Board of Appeals shall prescribe the form and contents of petitions. A Petitioner shall obtain the petition from the Department of Planning and Zoning. The Petitioner shall ensure the accuracy and completeness of the information required in the petition. The petition shall be filed with the clerk of the Board, as defined under 2.201(c). The Department of Planning and Zoning may require corrections to the petition or additional information before the hearing on the petition is scheduled.

(b) Amendments to the Petition. If any amendments to the petition are made before or during a hearing, the Board, either before or during the hearing, may continue the hearing, or may suspend or postpone the hearing and remand the amended petition to the Department of Planning and Zoning and the Planning Board for further recommendations.

(c) Substantive Amendments to the Petition. If any substantive amendments to the petition are made before or during the hearing, the Board, either before or during the hearing, shall suspend or postpone the hearing and remand the amended petition to the Department of Planning and Zoning and the Planning Board for further recommendations.

(d) Dismissal. The Board shall dismiss a petition if it lacks jurisdiction to hear the petition. The Board may dismiss a petition if the Petitioner fails to request a hearing on the petition within six months of the date a petition is placed on the unscheduled docket or as set forth in section 2.204(h).

(e) Payment of Fees. At the time the petition is filed with the clerk of the Board, the Petitioner shall pay the filing and/or hearing fees in accordance with the current schedule of fees adopted by resolution of the County Council. Checks shall be made payable to the Director of Finance of Howard County.

(f) Refund of Fees. On its own motion and with sufficient cause, the Board may order the Director of Finance to refund the filing and/or hearing fees. If the Board of Appeals reverses the decision of an administrative agency after an appeal hearing pursuant to this subtitle, the Board shall order the Director of Finance to refund all administrative hearing and filing fees to the Appellant.

SECTION 2.203. NOTICE TO THE PUBLIC.

(a) Advertising. The Petitioner, at his or her own expense, shall advertise the date, time and place of the initial hearing in at least two newspapers of general circulation in Howard County. For variances in residential districts, the advertisement shall be published at least fifteen

days before the hearing. For all other petitions, the advertisement shall be published at least thirty days prior to the hearing. The Department of Planning and Zoning shall approve the proposed advertising before it is published.

(b) Posting of Property. Except in administrative appeals described in Section 2.203(d), if a petition involves land use, the property involved shall be posted with the time, date and place of the initial hearing. For variances in residential districts, the property shall be posted for at least fifteen days immediately before the hearing. For all other petitions, the property shall be posted for at least thirty days immediately before the hearing. The Department of Planning and Zoning shall determine the number of posters required and their location and the Petitioner shall bear the expense of posting. The Department of Planning and Zoning shall supply the posters. The Petitioner shall properly erect and maintain the posters.

(c) Filing Affidavit of Posting and Certificates of Advertising. The Petitioner shall file certificates of advertising and an affidavit of posting with the clerk of the Board or the secretary of the Board prior to the hearing.

(d) Hearings on Administrative Appeal From a Notice of Violation of County Laws or Regulations or on the Record. The advertising and posting requirements of this section do not apply to hearings on administrative appeals from a notice of violation of county laws or regulations or appeals heard on the record pursuant to Section 2.210(b).

(e) Hearings on Other Administrative Appeals. If the Petitioner cannot post the property because the Petitioner does not own the property, then the Petitioner shall send a copy of the petition and written notification of the place, time and date of the hearing to the property owner and the adjoining property owners, and shall file an affidavit of written notification with the clerk of the Board. The Petitioner shall comply with the advertising requirements.

(f) Hearings for Clarification or Revocation of a Special Exception when the Department of Planning and Zoning is the Petitioner. When the hearing is for clarification or revocation of a special exception and the Department of Planning and Zoning is the Petitioner, the Department of Planning and Zoning shall:

- (1) Advertise the date, time and place of the initial hearing at least thirty days before the hearing in at least two newspapers of general circulation in Howard County;
- (2) Send written notification of the place, time and date of the hearing to the adjoining and confronting property owners; and
- (3) Attempt to post the property.

(g) Responsibility for Assuring Compliance with Advertising and Posting Requirements. The Petitioner is responsible for assuring compliance with the advertising and posting requirements of this subtitle. If any question arises regarding compliance with the advertising and posting requirements, the burden is on the Petitioner to prove compliance. If the

Board determines that the Petitioner has made a good faith effort to comply with the advertising and posting requirements, the Board may give the Petitioner a reasonable opportunity to correct the non-compliance or, if the Board determines that the Petitioner has substantially complied with the public notice requirement, proceed with the hearing. If the Board determines that the Petitioner has not made a good faith effort to comply with the advertising and posting requirements, the Board may dismiss the petition.

SECTION 2.204. MEETINGS AND HEARINGS.

(a) Scheduled by Chairperson. The Board of Appeals shall hold meetings and hearings as scheduled by the chairperson, including preliminary hearings when the chairperson deems them necessary.

(b) Open to Public. The public is invited to attend Board of Appeals meetings and hearings. The individuals attending shall maintain order and refrain from disturbing the orderly process of the meeting or hearing. The chairperson may clear the room of disruptive individuals, or recess the meeting or hearing.

(c) Open Hearings. Evidence shall be presented to the Board of Appeals only in hearings open to the public. The Board shall not receive written or oral testimony from a party in interest outside of a hearing. Board members and the Board's staff shall not engage in communications of any kind with anyone other than Board counsel or staff, or another Board member regarding the merits of a case prior to the issuance of the decision and order.

(d) Place and Time of Hearings and Meetings. Board of Appeals hearings and meetings shall be held in the George Howard Building, Ellicott City, Maryland every Tuesday and Thursday at 7:30 p.m. unless the Chairperson schedules the hearing or meeting at a different date, time and place. Meetings of the Board of Appeals to deliberate cases and for other matters may be held from time to time, as determined by the Board. Notice of a meeting or hearing shall be posted at the Board's office in the George Howard Building one day prior to the meeting or hearing.

(e) Closed Meetings. The Board of Appeals may close a meeting, subject to the Maryland Open Meetings Act.

(f) Signing Up to Testify. All individuals who are called to testify or desire to testify at a hearing shall sign their own name to the roster in favor of or opposed to the petition before the Board, as the case may be. If a hearing is continued, only the individuals who have signed a roster prior to the end of the Petitioner's case or are called by the Petitioner in rebuttal shall be permitted to testify.

(g) Subsequent Hearings. Cases which have not been concluded at the initial hearing may be continued to a day and time announced by the Board immediately before the initial hearing is suspended. It shall not be necessary to readvertise a continued hearing or repost property.

(h) **Postponement.** All requests for postponement of the initial hearing date must be received by the Board of Appeals in writing, before the scheduled date of the initial hearing. No requests for postponement of a hearing shall be granted absent compelling circumstances. If a hearing is postponed, the Petitioner shall readvertise and repost the property with the new hearing date and time in accordance with these rules. Upon a third request for postponement of a hearing, the Board may dismiss the petition.

(i) **Correspondence.** A party filing written correspondence with the Board shall certify in writing that a copy of the correspondence has been served to all parties of record to the case or to their designated spokesperson. The Board may not consider the correspondence as evidence and shall return it if it is not accompanied by that written certification.

(j) **Cases Pending in Court.** The Board shall not hold a hearing on a petition involving substantially the same issues of a case that has been filed and is pending before a court of law. A hearing may be scheduled when the Board is advised by the Petitioner that the court has reached a final decision. The hearing shall be scheduled at the earliest possible date.

SECTION 2.205. RECORD OF HEARINGS.

(a) **Official Record.** The Board of Appeals shall maintain an official record of its proceedings in each case. This record shall include all testimony and exhibits and a recording of the proceedings.

(b) **Transcription of Testimony.** Transcriptions of testimony shall be made if requested for court review. The transcribed testimony may be obtained from the secretary of the Board upon payment in advance of the cost of transcribing the record. The transcriber shall certify the accuracy of any transcript. The County Council shall prescribe by resolution the specifications for transcript preparation and a reasonable fee to be charged for the costs of transcription and certification.

SECTION 2.206. ADMINISTRATIVE APPEALS.

An individual wishing to appeal an administrative decision of a county agency shall file an appeal on the petition provided by the Department of Planning and Zoning within thirty days of the date of that administrative decision, unless the law provides a different time period for appeal.

SECTION 2.207. EVIDENCE AND MOTIONS.

(a) **Pre-submission of Technical Reports.** Any Petitioner or Proponent wishing to submit a technical report or other similar documentary evidence to the Board at the hearing must file six copies of the report with the clerk of the Board at least thirty days prior to the date of the initial hearing on the petition. Any Opponent or Respondent wishing to submit a report or other similar documentary evidence to the Board at the hearing shall file six copies of the report with the clerk of the Board and send one copy to the Petitioner at least ten days prior to the date of the initial hearing on the petition. If technical reports are filed late, the Board may postpone the

hearing to allow the Board members or other parties time to review the report, or take any other course of action as determined by the Board. Even if the report or other documentation is timely filed, the Board reserves the right to postpone the hearing and to require additional copies of the material for technical staff review.

(b) Rules of Evidence. Any evidence which would be admissible under the rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the Board of Appeals. The Board is not bound by the technical rules of evidence but will apply those rules so that probative evidence may be conveniently brought forth. The Board may exclude immaterial or unduly repetitious testimony and other evidence and may limit the number of witnesses when testimony is cumulative in nature.

(c) Materials Received by Reference. Public records, previous decisions and orders of the Board of Appeals, technical staff reports, Planning Board recommendations and laws and regulations of Howard County which pertain to the particular case shall be received by the Board of Appeals for its consideration.

(d) Exhibits. Exhibits and plats admitted into evidence may not be mounted and shall be folded to a maximum size of nine inches by fourteen inches. An exact duplicate of the exhibit may be mounted and used for presentation.

(e) Motions. A party may request the Board to address a preliminary matter prior to the date of the initial hearing by filing the request as a motion to the Board and certifying that a copy was provided to all persons known to have an interest in the case, including but not limited to the Petitioner, the property owner, the administrative agency, and any person entitled to written notification under rule 2.203(e) and (f), as the case may be. The certification shall state "any person interested in responding to the motion shall file a written response with the Board within fifteen days of the date that the motion was filed." The Board may rule on the motion at any time fifteen days after the filing of the motion.

SECTION 2.208. APPEARANCES BEFORE THE BOARD OF APPEALS.

(a) Parties. Except for administrative appeals described in subsections (b) and (c), an individual or any other legal entity may become a party to a proceeding before the Board by:

- (1) Providing the name, address and signature of the individual or entity and the legal entity's duly authorized representative on a sign-up sheet provided by the Board;
- (2) Testifying before the Board and providing it with the name and address of the party and/or legal entity; or
- (3) Delivering a letter to the Board, received before the close of the record in the case, indicating that the individual or entity is an interested party to the matter before the Board and providing the party's name, address and signature. Such letter may not be considered for any substantive content and will be received into evidence only for identification of parties to the case. In addition, petitions for or against a

matter shall not be used for purposes of conferring party status on those individuals signing the petition under this provision.

(b) Parties to Administrative Appeals From Notice of Violation. Parties to an administrative appeal from the issuance of a notice of violation of county laws or regulations are limited to the Petitioner and the administrative agency issuing the violation notice.

(c) Parties to Administrative Appeals on the Record. Parties to an administrative appeal to be heard by the Board on the record pursuant to section 2.210(b) are limited to the administrative agency and the parties of record before the administrative agency.

(d) Who May Appear. The following individuals may appear before the Board providing that the individual, partnership, corporation, trust, association, political subdivision, body or department they represent is a party to the proceedings before the Board:

- (1) An individual may appear on his or her own behalf.
- (2) A member of a partnership may represent the partnership.
- (3) A duly authorized representative of a corporation, trust, or association may represent the corporation, trust, or association.
- (4) A duly authorized representative or employee of a political subdivision, body, or department may represent the political subdivision, body, or department.

(e) Spokesperson. When a group of individuals appears in opposition to a petition, the Board may request them to elect a spokesperson who shall have the power to cross-examine witnesses, call witnesses, introduce evidence on behalf of the group, object to the introduction of evidence, make opening and closing statements, and act in a representative capacity solely on behalf of those individuals electing the spokesperson. Those individuals not electing to be represented by a spokesperson may act on their own behalf.

(f) Representation by Attorney-at-Law. Any party in a proceeding may be represented by an attorney-at-law admitted to practice law before the Court of Appeals of Maryland. Before the hearing begins the attorney shall give the Board written notification of the names and addresses of individuals he or she will be representing and his or her own name, address, and telephone number.

(g) Representatives of Associations; Number of Members; Geographical Limits. An individual testifying on behalf of any association shall substantiate that he or she is authorized to speak for and present the views of that association. The authorization may consist of a duly adopted resolution of the association signed by the president or attested by the secretary. The individual testifying shall state the number of members in the association and its geographic boundaries.

(h) Subpoenas.

- (1) Request for Subpoena; Content of Request. Persons requesting the Board to issue a subpoena shall submit a written request to the Board at least twenty-one days before the initial hearing. The request shall contain the name and address of the person to be subpoenaed, a brief proffer as to the content and relevance of the person's expected testimony, and a list of all documents to be brought to the hearing by the subpoenaed person. The subpoena shall be issued by the Board at least fourteen days prior to the date of the hearing.
- (2) Issuance and Service of Subpoena. The subpoena shall be signed by the chairperson of the Board at least fourteen days prior to the date of the hearing. The signed subpoena shall be promptly delivered to the person requesting the subpoena who shall be responsible for arranging service of the subpoena at least seven days prior to the date of the hearing. The person serving the subpoena shall certify in writing that the subpoena was served personally or by certified mail.

SECTION 2.209. CONDUCT OF BOARD OF APPEALS HEARINGS; ORIGINAL JURISDICTION.

(a) **Oath.** An individual testifying shall give his or her name and address and take the following oath given by the chairperson: "Do you solemnly promise to speak truthfully in the testimony you are about to give?"

(b) Order of Presentation.

- (1) The County Solicitor introduces reports and official documents pertaining to the case.
- (2) Opening statements.
- (3) Petitioner's presentation.
 - (i) Direct examination of witnesses.
 - (ii) Cross-examination of witnesses by the opposition, by Board members and by the County Solicitor.
 - a. *Individuals questioning the Petitioner's witness.* Normally, the opposition or a spokesperson cross-examines, but any individual wishing to question the Petitioner's witness may do so with leave from the chairperson. The chairperson may grant this leave after recognizing the individual who wishes to question the Petitioner's witness and after that individual has given his or her name, home address, and, if appropriate, its location with reference to the property which is the subject of the hearing.

- b. *Questioning.* Questioning shall be brief, pertain only to statements made by the witness, and shall not be preceded by statements or speeches. The questioning shall be interrogatory in nature and shall not be argumentative, nor make allusions about the personality or motives of the witness. At the discretion of the chairperson, questions or cross-examination shall be put in written form and asked by the County Solicitor or Assistant County Solicitor advising the Board.
 - (iii) Re-direct examination of Petitioner's witnesses.
 - (iv) Re-cross-examination of Petitioner's witnesses.
- (4) Opposition's presentation.
 - (i) Direct examination of opposition's witnesses.
 - (ii) Cross-examination of opposition's witnesses by the Petitioner, by the Board members, and by the County Solicitor.
 - (iii) Re-direct examination of opposition's witnesses.
 - (iv) Re-cross-examination of opposition's witnesses.
- (5) Petitioner's rebuttal. The Petitioner may present evidence to rebut any evidence introduced by the opposition, but no new line of testimony may be introduced at this time.
- (6) Petitioner's summation.
- (7) Opposition's summation.

(c) Burden of Proof. The burden of proof 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.

(d) The Board's Action. At the end of the presentation, the Board of Appeals may grant or deny the petition, stating its findings of fact and conclusions of law, or it may take the case under advisement for further deliberation and later decision. The Board may not consider evidence from either side after the hearing is concluded; however, the Board, on its own initiative or in response to a request by a party, may receive or require legal memoranda summarizing the presentations of the Petitioner and the opposition.

SECTION 2.210. CONDUCT OF ADMINISTRATIVE APPEAL HEARINGS.

(a) De Novo Appeals.

- (1) Oath. An individual testifying shall give his or her name and address after taking the following oath given by the chairperson: "Do you solemnly promise to speak truthfully in the testimony you are about to give?"
- (2) Order of presentation.
 - (i) The County Solicitor or Assistant County Solicitor advising the Board introduces reports and official documents pertaining to the case.
 - (ii) Opening statements.
 - (iii) Presentation by party(ies) having the burden of proof ("proponent").
 - a. Direct examination of witnesses.
 - b. Cross-examination of witnesses by adverse party(ies) ("respondent"), by Board members, and Board's attorney.
 - c. Re-direct examination.
 - d. Re-cross-examination.
 - (iv) Presentation by the respondent.
 - a. Direct examination of witnesses.
 - b. Cross-examination of witnesses by proponent, by Board members, and Board's attorney.
 - c. Re-direct examination.
 - d. Re-cross-examination.
 - (v) Proponent's rebuttal.
 - (vi) Summation by proponent.
 - (vii) Summation by respondent.
- (3) Legal memoranda. The Board may receive or require legal memoranda summarizing the presentations of the parties, either on its own or upon approval of a request made at the hearing.

- (4) Burden of proof.
 - (i) In an appeal of an administrative agency's issuance of a notice of violation of county laws and regulations, the burden of proof is upon the administrative agency (proponent) to show, by a preponderance of the evidence, that the respondent has violated the laws or regulations in question. However, it shall be the respondent's burden to prove all affirmative defenses, including the defense of nonconforming use.
 - (ii) In all other *de novo* appeals, the burden of proof is upon the appellant to show that the action taken by the administrative agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.

(b) Appeals on the Record.

- (1) Record Transcript. Within thirty days of filing an appeal on the record from an action of an administrative agency, the Appellant shall file one copy of the record transcript of the hearing being appealed with the clerk of the Board, and shall serve one copy of the record transcript with the administrative agency and five copies with the Board of Appeals.
- (2) Memorandum of Appellant. Within fifteen days of filing the transcript, the Appellant shall file a memorandum setting forth concisely all points on which the appeal is based and an argument in support of each point with the clerk of the Board, and serve one copy of the memorandum with the administrative agency and five copies with the Board of Appeals. The argument shall include:
 - (i) Points of law;
 - (ii) References to legal authority;
 - (iii) Page citations to particular portions of the record transcript; and
 - (iv) Exhibits by number.
- (3) Administrative Agency's Reply Memorandum. Within fifteen days after the Appellant's memorandum is filed, the administrative agency shall file a reply memorandum with the Board. The memorandum shall answer concisely all points on which the appeal is based and an argument against each point. The arguments shall include:
 - (i) Points of law;
 - (ii) References to legal authority;
 - (iii) Page citations to particular portions of the record transcript; and
 - (iv) Exhibits by number.
- (4) Sanctions for Late Filing of Memorandum. If the Appellant fails to file the memorandum within the time prescribed under this section, the Board may dismiss the appeal.

- (5) Oral arguments. The Board shall entertain oral arguments based upon the record. The Board may limit the length of oral arguments. For good cause shown, the Board may receive additional evidence. The order of presentation shall be as follows:
- (i) Presentation of the reports and decision of the county agency by the Appellant.
 - (ii) Presentation by the Appellant.
 - (iii) Presentation by the county agency or Solicitor.
 - (iv) Presentation by the Opposition.
 - (v) Decision by the Board
- (6) Burden of Proof. The burden of proof shall be on the Appellant to show that the action taken by the administrative agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.
- (c) **The Board's Action.** The Board may dismiss the administrative appeal or may affirm, reverse, or modify the agency's action, remand the action to the agency for further proceedings, or an appropriate combination of the above.

SECTION 2.211. DECISION AND ORDER.

(a) **Time Period of Issuance of Decision and Order.** Each case shall be decided and a decision and order issued no later than sixty days after the case is deliberated, unless the Board on its own motion and with good and sufficient reason, extends the time to no later than ninety days after the Board concludes its deliberation of a case.

(b) **Decision and Order.** The final decision and order of the Board granting or denying the petition shall be in writing, signed by the voting Board members, attested by the administrative assistant or the secretary, and shall be accompanied by findings of fact and conclusions of law. The decision and order shall be made a part of the record of the proceedings, filed with the Department of Planning and Zoning, and maintained as part of the official records of the county.

(c) **Minority Opinion.** Any member who does not agree with the majority opinion may prepare a minority opinion to be attached to the Decision and Order.

(d) **Mail Copies to Parties; File Plats or Summaries.** When the clerk receives copies of the decision and order, the clerk shall mail copies to the parties or their representatives. After a land use petition is granted by the Board, the Department of Planning and Zoning shall file plats or summaries, provided by the Petitioner, with the Howard County office of the Maryland State Department of Assessments and Taxation.

(e) **Appeals from Decision of the Board.** Within thirty days after any decision of the Board of Appeals is entered, any person, officer, department, board or bureau of the county, jointly or severally aggrieved by any such decision, may appeal to the Circuit Court for Howard County, in accordance with the Maryland Rules of Procedure. The Board of Appeals shall be a party to all appeals and shall be represented at any such hearing by the Office of Law.

SECTION 2.212. REVISORY POWER OF THE BOARD.

(a) Request of a Party. Within fifteen days of the Board issuing a decision and order, a party of record may file a motion for reconsideration. The Board may revise its decision and order if the party petitioning for reconsideration establishes mistake of fact or mistake of law. The motion for reconsideration may include a request to suspend the decision and order.

(b) Process. The motion shall be in writing. The moving party shall mail or deliver a copy of the motion to each party and certify to the Board that notice to each party has been provided. Any party of record may file a written response to the motion for reconsideration within fifteen days of the filing date of a motion for reconsideration. At the discretion of the Board, oral argument may be heard on the motion. The Board shall not consider new or additional evidence unless such evidence could not reasonably have been presented at the hearing. If the Board determines to revise its decision and order, the Board shall send a copy of the revised decision and order to each party.

(c) Correcting Clerical Error. At any time and without prior notice or hearing, on its own initiative or on motion of any party, the Board may modify its decision in order to correct a clerical error.

(d) Time for Appeal to Circuit Court. The filing of a motion for reconsideration does not suspend the time for filing an appeal to Circuit Court unless the Board suspends its decision and order. Once an appeal to the Circuit Court is filed, the Board no longer retains jurisdiction to suspend its decision and order or to consider a motion for reconsideration.

SECTION 2.213. SEVERABILITY.

If any clause, sentence, part or parts of this subtitle, or of any section of this subtitle, is held to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the validity of the remaining parts of this title or of any section.

Appendix A

HOWARD COUNTY CHARTER

ARTICLE V. BOARD OF APPEALS

SECTION 501. THE COUNTY BOARD OF APPEALS.

(a) *Appointment; term; compensation.* The County Board of Appeals shall consist of five registered voters and residents of the County appointed by the Council. Appointees shall serve overlapping terms of five years from the first day of January of the year of their appointments, or until their successors are appointed. Vacancies, except those at the expiration of a term, shall be filled in the same manner as the original appointment and for the unexpired term. No member shall be reappointed after having served eight consecutive years immediately prior to reappointment. No more than three members shall be registered with the same political party. The members of the Board shall be paid at the rate of Twelve Hundred Dollars (\$1,200.00) per year unless such compensation be changed as provided in Section 501(f) of this article. Members of the Board shall receive reasonable and necessary expenses as may be provided in the budget.

(b) *Powers and functions.* The Board of Appeals may exercise the functions and powers relating to the hearing and deciding, either originally or on appeal or review, of such matters as are or may be set forth in Article 25A, Subparagraph (u) of the Annotated Code of Maryland, excluding those matters affecting the adopting of or change in the general plan, zoning map, rules, regulations or ordinances.

(c) *Rules of practice and procedure.* The Board of Appeals shall have authority to adopt and amend rules of practice governing its proceedings which shall have the force and effect of law when approved by legislative act of the Council. Such rules of practice and procedures shall not be inconsistent with the Administrative Procedures Act, Article 41, of the Annotated Code of Maryland. The rules may relate to filing fees, meetings and hearings of the Board, the manner in which its chairperson shall be selected and the terms which he shall serve as Chairperson and other pertinent matters deemed appropriate and necessary for the Board. Three members of the Board shall constitute a quorum of the Board, and its hearings shall receive public notice as required by law. All matters which come before the Board pursuant to its exercise of original jurisdiction shall receive a de novo hearing on all issues. Those matters coming before the Board pursuant to an appeal from an executive, administrative or adjudicatory order wherein a formal hearing was held and a verbatim record developed shall be reviewed by the Board on the basis of the record before it. However, for good cause shown, any party before the Board shall have the opportunity to present additional evidence on any issue if, in the opinion of the Board, it is required for proper disposition of the case. All hearings held by the Board shall be open to the public, and provision shall be made for all interested citizens and citizens groups to be heard. The Board shall cause to be maintained complete public records of its proceedings, with a suitable index.

(d) *Appeals from decisions of the Board.* Within thirty days after any decision of the Board of Appeals is entered, any person, officer, department, board or bureau of the County, jointly or severally aggrieved by any such decision, may appeal to the Circuit Court for Howard County, in accordance with the Maryland Rules of Procedure. The Board of Appeals shall be a party to all appeals and shall be represented at any such hearing by the Office of Law.

(e) *Employees of the Board.* The Board may appoint, within budgetary limitations, such employees, and the Executive shall make available to the Board such services and facilities of the County, as are necessary or appropriate for the proper performance of its duties.

(f) *Implementing legislation.* The powers and functions of the Board of Appeals as herein provided for shall be defined by implementing legislation heretofore or hereafter enacted by the Council, subject to and to the extent required by applicable State law. The Council may by legislative act increase the compensation of the members of the Board of Appeals as provided in Section 501(a) of this article and thereafter decrease such compensation; provided, however, that no reduction shall affect the compensation of a member of the Board of Appeals during his or her current term, and in no event shall the Council have the power to decrease the compensation of members of the Board below the figure provided in this Charter. To the extent permitted by State law, the Council shall also have the power, by legislative act, to prescribe other appeals to be heard by, or to limit the jurisdiction of, the Board of Appeals in addition to those specified in this Article.

Appendix B

HOWARD COUNTY CODE

TITLE 16. PLANNING, ZONING AND SUBDIVISIONS AND LAND DEVELOPMENT REGULATIONS

SUBTITLE 3. BOARD OF APPEALS

SECTION 16.300. COMPENSATION.

Members of the Howard County Board of Appeals shall be paid \$4,500 per year plus \$90 per official public session, up to a maximum cumulative total payment of \$12,900 per year. Members of the Board shall receive reasonable and necessary expenses, as may be provided in the budget.

SECTION 16.301. POWERS.

The Howard County Board of Appeals shall have the following zoning powers:

- (a) To authorize a variance or exception from the terms of the zoning regulations as is necessary to avoid arbitrariness and to obtain substantial justice within the spirit of the zoning regulations. However, the County Council, by passage of a resolution after public hearing, shall be the sole authority to grant these variances for governmental uses of land.
- (b) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the application, interpretation, or enforcement of this title or of any regulations adopted pursuant to it.
- (c) To authorize uses provided by the zoning regulations. The Board of Appeals shall not make a final decision on uses authorized by the zoning regulations until it has considered the report of the Planning Board. However, the County Council, by passage of a resolution after public hearing, shall be the sole authority to issue special use variances for governmental uses of land.

SECTION 16.302. ENFORCEMENT.

In addition to any other remedies provided by law, the Department of Planning and Zoning may institute any appropriate action or proceedings to compel compliance with a decision of the Board of Appeals in any zoning matter. Alternatively or in addition to and concurrent with all other remedies, the Department of Planning and Zoning may enforce a decision of the Board of Appeals. With civil penalties, as provided in title 24, "Civil Penalties," of the Howard County Code. A violation shall be a class B offense.

SECTION 16.303. SEVERABILITY.

If any clause, sentence, part or parts of this subtitle, or of any section thereof, shall be held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining parts of this title or of any section thereof.

Section 501. - The County Board of Appeals.

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

subject to and to the extent required by applicable State law. The Council may by legislative act increase the compensation of the members of the Board of Appeals as provided in Section 501(a) of this Article and thereafter decrease such compensation; provided, however, that no reduction shall affect the compensation of a member of the Board of Appeals during his or her current term, and in no event shall the council have the power to decrease the compensation of members of the Board below the figure provided in this Charter. To the extent permitted by State law, the Council shall also have the power, by legislative act, to prescribe other appeals to be heard by, or to limit the jurisdiction of, the Board of Appeals in addition to those specified in this Article.

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

Section 502. - Board of Appeals hearing examiner.

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

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

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

County Council Of Howard County, Maryland

2012 Legislative Session

Legislative Day No. 8

Resolution No. 100 - 2012

Introduced by: The Chair at the Request of the Charter Review Commission

A RESOLUTION proposing to amend the Howard County Charter to make various technical changes; to amend Section 202 "The County Council" by removing an obsolete factor to be considered in redistricting; to amend Section 501 "The County Board of Appeals" by correcting a citation to the Annotated Code of Maryland; to amend Section 601 "Fiscal year and tax year definitions", Section 615A "Budget Stabilization", and Section 615B "Restrictions on Use of Surplus Revenues" in order to consolidate certain duplicate definitions; to amend Section 606 'Action on the annual budget and appropriation ordinance by the County Council' and Section 914 'Definitions and rules of construction' by removing obsolete references; to amend Section 709 "Prohibitions" by correcting a typographical error; and submitting this amendment to the voters of Howard County for their adoption or rejection in accordance with Article X of the Howard County Charter and Article XIA of the Maryland Constitution.

Introduced and read first time June 4, 2012.

By order Stephen M. LeGendre
Stephen M. LeGendre, Administrator

Read for a second time and a public hearing held on June 18, 2012.

Tabled July 2, 2012

By order Stephen M. LeGendre
Stephen M. LeGendre, Administrator

This Resolution was read for the third time and was Adopted , Adopted with amendments , Failed , Withdrawn by the County Council on July 6, 2012, 2012.

By order Stephen M. LeGendre
Stephen M. LeGendre, Administrator

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

1 **BE IT RESOLVED** by the County Council of Howard County, Maryland, that
2 Section 202 "The County Council" subsection (f) "Redistricting" 1. "Boundaries", of
3 Article II, "The Legislative Branch", of the Howard County Charter, is hereby amended to
4 read as follows:

5
6 **Article II. The Legislative Branch.**

7 **Section 202. The County Council.**

8 (f) *Redistricting.*

9 1. *Boundaries.*

10 The Council shall appoint, by resolution, not later than April 1 of the year after
11 each decennial census date, a Councilmanic Redistricting Commission. The
12 Central Committee of each political party which polled at least twenty-five per
13 centum of the total vote cast for all the candidates for the Office of County
14 Executive in the last preceding general election shall nominate three persons to
15 serve on the Commission. The Council shall appoint all such nominees as
16 members of the Commission as well as one additional member of the
17 Commission. The Council shall appoint the Chairperson of the Commission from
18 among the Commission members. No person shall be eligible for appointment to
19 the Commission who holds elective office.

20 By October 15 of the year in which the Commission is appointed, the
21 Commission shall prepare a plan of Councilmanic Districts and shall present that
22 plan to the Council. Within thirty days after receiving the plan of the
23 Commission, the Council shall hold a public hearing on the plan. If by March 15
24 of the year following submission of the plan, no ordinance re-establishing the
25 boundaries of the Councilmanic Districts has been enacted, then the plan as
26 submitted by the Commission shall become law. Any Councilmanic District
27 established in accordance with this Article shall be compact, contiguous,
28 substantially equal in population, and have common interest as a result of
29 geography, [[occupation,]] history, or existing political boundaries. Any
30 ordinance establishing Councilmanic Districts shall be exempt from referendum.

1 The Board of Supervisors of Elections shall take any necessary steps to
2 implement any such revisions of the Councilmanic District Boundaries so
3 adopted.
4

5 **AND BE IT FURTHER RESOLVED** *by the County Council of Howard*
6 *County, Maryland that Section 501 "The County Board of Appeals." subsection (b)*
7 *"Powers and functions", of Article V, "Board of Appeals", of the Howard County*
8 *Charter, is hereby amended to read as follows:*

9
10 **Article V. Board of Appeals.**

11 **Section 501. The County Board of Appeals.**

12
13 b) *Powers and functions.* The Board of Appeals may exercise the functions and
14 powers relating to the hearing and deciding, either originally or on appeal or
15 review, of such matters as are or may be set forth in Article [[25a, Subparagraph
16 (u)]] 25A, SECTION 5 (U) of the Annotated Code of Maryland, excluding those
17 matters affecting the adopting of or change in the general plan, zoning map, rules,
18 regulations or ordinances.
19

20 **AND BE IT FURTHER RESOLVED** *by the County Council of Howard*
21 *County, Maryland that Section 601 "Fiscal year and tax year and definitions",*
22 *subsection (b) "Definitions", of Article VI, "Budgetary and Fiscal Procedures", of the*
23 *Howard County Charter, is hereby amended to renumber paragraph (7) to be paragraph*
24 *(8) and to add new paragraphs (7), (8), (10), and (11), all to read as follows:*

25
26 **Article VI. Budgetary and Fiscal Procedures.**

27 **Section 601. Fiscal year and tax year and definitions.**

28
29 (b) *Definitions.*
30

County Council of Howard County, Maryland

2000 Legislative Session

Legislative day # 10

Date July 3, 2000

RESOLUTION NO. 103 - 2000

Introduced by: Mary C. Lorsung and Guy Guzzone

A Resolution proposing an amendment to the Howard County Charter by adding new Section 502 "Board of Appeals Hearing Examiner" to Article V "Board of Appeals"; authorizing the County Council to appoint hearing examiners to conduct hearings and make decisions in matters within the jurisdiction of the Board of Appeals; establishing certain qualifications for hearing examiners; authorizing the Council to establish the duties, powers, authority and jurisdiction of hearing examiners; providing that decisions made by hearing examiners may be appealed to the Board of Appeals; providing that hearing examiners may be removed from office under certain conditions; amending Section 501 "The County Board of Appeals" to remove certain inconsistent provisions; and submitting this amendment to the voters of Howard County for their adoption or rejection in accordance with Article X of the Howard County Charter and Article XIA of the Maryland Constitution.

Introduced and read first time on July 3, 2000.

By order Sheila M. Tolliver
Sheila M. Tolliver, Administrator to the County Council

Read for a second time and a public hearing held on July 17, 2000.

By order Sheila M. Tolliver
Sheila M. Tolliver, Administrator to the County Council

This Resolution was read the third time and was Adopted , Adopted with amendments , Failed , Withdrawn by the County Council on July 27, 2000.

Certified by Sheila M. Tolliver
Sheila M. Tolliver, Administrator to the County Council

NOTE: {{text in brackets}} indicates deletions from existing language; TEXT IN ALL CAPITALS indicates additions to existing language. Strikeout indicates material deleted by amendment; Underlining indicates material added by amendment.

1 WHEREAS, The Howard County Board of Appeals is a citizen board charged with hearing
2 many different types of issues, including appeals of administrative decisions, special exception
3 applications, residential variances, commercial variances, and others; and

4 WHEREAS, The Board makes diligent efforts to perform its duties in a timely manner, but
5 despite these efforts it can be 6 to 10 months before the hearing on an application is held and at least
6 another month before the Board can take action and issue a decision; and

7 WHEREAS, The County Council and the Board believe that establishing a hearing examiner
8 system for the Board would help to ease the Board's caseload and enable County residents to receive
9 Board review and decisions in a more reasonable time;

10 NOW, THEREFORE, BE IT RESOLVED by the County Council of Howard County, Maryland,
11 that Subsection (c) of Section 501 "The County Board of Appeals", of Article V "Board of Appeals",
12 of the Howard County Charter, is amended to read as follows:

13 Article V. Board of Appeals.

14 Section 501. The County Board of Appeals.

15 (c) Rules of practice and procedure. The Board of Appeals shall have authority to adopt and
16 amend rules of practice governing its proceedings which shall have the force and effect of law when
17 approved by legislative act of the Council. Such rules of practice and procedures shall not be
18 inconsistent with the Administrative [[Procedures Act, Article 41,]] PROCEDURE ACT of the
19 Annotated Code of Maryland. The rules may relate to filing fees, meetings and hearings of the
20 Board, the manner in which its Chairperson shall be selected and the terms which he shall serve as
21 Chairperson and other pertinent matters deemed appropriate and necessary for the Board. Three
22 members of the Board shall constitute a quorum of the Board, and its hearings shall receive public
23 notice as required by law. [[All matters which come before the Board pursuant to its exercise of
24 original jurisdiction shall receive a de novo hearing on all issues. Those matters coming before the
25 Board pursuant to an appeal from an executive, administrative or adjudicatory order wherein a
26 formal hearing was held and a verbatim record developed shall be reviewed by the Board on the
27 basis of the record before it. However, for good cause shown, any party before the Board shall have
28 the opportunity to present additional evidence on any issue if, in the opinion of the Board, it is
29 required for proper disposition of the case.]] All hearings held by the Board shall be open to the

1 public, and provision shall be made for all interested citizens and citizens groups to be heard. The
2 Board shall cause to be maintained complete public records of its proceedings, with a suitable index.

3 AND BE IT FURTHER RESOLVED by the County Council of Howard County, Maryland, that
4 new Section 502 "Board of Appeals Hearing Examiner" is added to Article V "Board of Appeals"
5 of the Howard County Charter, to read as follows:

6 Article V. Board of Appeals.

7 SECTION 502. BOARD OF APPEALS HEARING EXAMINER.

8 THE COUNTY COUNCIL MAY APPOINT HEARING EXAMINERS TO CONDUCT
9 HEARINGS AND MAKE DECISIONS CONCERNING MATTERS WITHIN THE
10 JURISDICTION OF THE BOARD OF APPEALS. DECISIONS OF AN EXAMINER MAY BE
11 APPEALED TO THE BOARD OF APPEALS AS PROVIDED BY LAW. THE COUNCIL SHALL
12 ESTABLISH BY LEGISLATIVE ACT THE DUTIES, POWERS, AUTHORITY AND
13 JURISDICTION OF ANY EXAMINER APPOINTED UNDER THIS SECTION. AN EXAMINER
14 SHALL BE A MEMBER IN GOOD STANDING OF THE BAR OF THE MARYLAND COURT
15 OF APPEALS AND AT THE TIME OF APPOINTMENT SHALL HAVE KNOWLEDGE OF
16 ADMINISTRATIVE AND ZONING LAW, PRACTICE, AND PROCEDURE. AN EXAMINER
17 MAY BE REMOVED FROM OFFICE BY VOTE OF TWO-THIRDS OF THE MEMBERS OF
18 THE COUNCIL.

19 AND BE IT FURTHER RESOLVED by the County Council of Howard County, Maryland, that
20 this proposed amendment to the Howard County Charter shall be submitted to the voters of Howard
21 County at the general election to be held in November of 2000 for their adoption or rejection, in
22 accordance with Article X of the Howard County Charter and Article XIA of the Maryland
23 Constitution, and, if adopted by a majority of the voters, shall stand adopted from and after the 30th
24 day following the election.

25 AND BE IT FURTHER RESOLVED by the County Council of Howard County, Maryland, that
26 this resolution, having been approved by two-thirds of the members of the Council, stands adopted
27 this 27th day of July, 2000, in accordance with Article X of the Howard
28 County Charter.

A county may enact local laws to provide for:

- (1) the establishment of a county board of appeals, whose members shall be appointed by the county legislative body;
 - (2) the number, qualifications, terms, and compensation of the members of the county board of appeals;
 - (3) the adoption by the county board of appeals of rules of practice that govern its proceedings; and
 - (4) a decision by the county board of appeals on petition of any interested person, after notice and opportunity for hearing, on the basis of a record before the board.
- (b) The county board of appeals may have original jurisdiction or jurisdiction to review the action of an administrative officer or unit of county government over matters arising under any law, ordinance, or regulation of the county council that concerns:
- (1) an application for a zoning variation or exception or amendment of a zoning map;
 - (2) the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; or
 - (3) the assessment of any special benefit tax.
- (c) When issuing a decision, the county board of appeals shall file an opinion that shall include a statement of the facts found and the grounds for the decision.
- (d)(1) Any person aggrieved by the decision and a party to the proceeding before the county board of appeals may seek review by the circuit court for the county.
- (2) The circuit court may:
- (i) affirm the decision; or
 - (ii) if the decision is not in accordance with law:
 1. modify the decision with or without remanding the case for rehearing; or
 2. reverse the decision with or without remanding the case for rehearing.

(3) Any party to the proceeding in the circuit court aggrieved by the decision of the circuit court may appeal to the Court of Special Appeals in the same manner provided for civil cases.