

February 22, 2022

Howard County Council Legislative Public Hearing Tuesday, February 22, 2022, Hybrid Meeting (Virtual and In-Person Meeting)

Testimony of Christopher Alleva, Columbia, MD 21044

443 310 1974

Subject: **Appointment of Jean Xu CR20-2022 to the Board of Appeals**

The Board of Appeals is arguably the most consequential appointed board in the County. In my testimony, I am offering several questions into the record for the nominee, Ms. Jean Xu.

The Howard County Board of Appeals has a long and distinguished history. It is an institution we need that the public relies on. We need this institution to be above reproach. We need them to be respected and trusted. We need them to be above bias, taint and prejudice. We need this institution to be fair, just, even-handed and insulated from the vagaries of politics because the powers we give this Board are awesome. They have the power to confer and deprive people valuable property rights.

Regrettably, this Board also has a history of not meeting these critical standards. This Board has too often in the past shown bias and pre-judgement. And even more disturbing, some have attempted to shift the burden of bias on to those impacted by that bias. This is a dangerous shifting of the burden. It is not the public's job to prove the bias shown by the Board did not influence decision making. It is the Board's job to prove to the public that this manifest bias was not outcome determinative. Bias and fairness cannot co-exist. There is a presumption that bias is bad and that is a presumption that applies in every facet of life.

The following questions directly relate on to matters the nominees will be routinely dealing with should the County Council confirm them.

1. In 2020, the Board was found guilty of violating the Open Meetings Act. The complainant alleged the Board cut off the recording during deliberations to cover up bias and discrimination against them. Will this nominee commit to investigating these allegations and report back to the Council what steps the Board will take to remedy this bias and ensure these violations are prevented in the future?
2. The Board of Appeals Rules of Procedure have not been updated for decades. Among other things, there are mis-references to State law sections that have been repealed and replaced; there are no rules covering virtual hearings; the burden of proof for administrative appeals has no evidentiary standard and is conflicted with a vague reference to "other de novo appeals." This results in a bastardized hearing that is neither fish nor fowl hopelessly tainting the decisions. Will this nominee commit to updating the Rules and submit them to the Council within 60 days for approval by a legislative act?

3. Citizens often contact Council members with violation of due process allegations. How are these complaints handled? Who has jurisdiction? Can you please provide Council with this information?

4. Numerous appeals have been thrown out because the Board has improperly demanded citizens prove standing in original jurisdiction cases. The operative Local Government State law article 10-305.4 plainly states the only requirement is being an "interested person": *"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."* It is long held public policy in Maryland that zoning and land use disputes are best adjudicated in local Boards of Appeals like the one that you have been nominated. Given these non-case specific premises, how would you apply the law of standing to interested parties and appellants? Please distinguish original jurisdiction and administrative appeal matters, preferably with actual examples from past Board cases.

5. Are parties or the petitioner permitted to submit evidence into record outside the proceedings?

6. Do the Boards rules permit re-deliberation or re-voting?

7. Can the Board reopen the case after deciding and hear an oral unilateral reconsideration request without hearing from the other side?

8. Aside from the required training mandated by the State how will you prepare yourself to discharge your responsibilities?

Thank you for the opportunity to offer this testimony.

Faithfully Submitted,

//////////S//////////

Chris Alleva