






# Howard County

## Internal Memorandum

**SUBJECT:** *Alternate Board Member*

**TO:** Howard County Board of Appeals

**FROM:** Gary W. Kuc, County Solicitor   
Barry Sanders, Senior Assistant County Solicitor   
Amanda Mihill, Senior Assistant County Solicitor 

**DATE:** April 10, 2025

This memorandum sets forth the main grounds for our prior legal advice that a Charter amendment is necessary to provide an alternate member for the Board of Appeals. In our opinion, providing for an alternate member without such an amendment would conflict with the Charter and is therefore legally insufficient and could provide a basis for a court to overturn a Board decision made with an alternate member.

### **Applicable Interpretation Principles**

A county “charter is equivalent to a constitution.” *Baltimore City Bd. of Elections v. Mayor of Baltimore*, 489 Md. 465, 478 (2025) (internal quotation marks omitted). “As with a constitution, a charter ‘provide[s] a broad organizational framework establishing the form and structure of government in pursuance of which the [local jurisdiction] is to be governed and local laws enacted’.” *Id.* at 248-49 (alteration in original) (internal quotation marks omitted). “[T]he basic function of a charter is to distribute power among various agencies of government, and between the government and the people who have delegated that power to their government.” *Id.* at 248 (alteration in original) (internal quotation marks omitted).

“The canons of construction used to interpret statutory language apply with equal force to the interpretation of a charter provision.” *Prince George’s County v. Thurston*, 479 Md. 575, 586 (2022). “The Court’s primary objective is to ascertain the purpose and intent of the charter’s framers.” *Id.* “Because we assume that the framers express their intent in the text of the charter, we principally focus on the plain language of the challenged provision as the primary source of legislative intent.” *Id.* (internal quotation marks omitted). “To discern legislative intent, we first assign the words of the charter provision their ordinary and natural meaning.” *Id.* (internal quotation marks omitted). A court “will not divine a legislative intention contrary to the plain language of the charter provision or judicially insert language to impose exceptions, limitations[,] or restrictions not evident in the plain language.” *Id.* (alteration in original) (internal quotation marks omitted). A court will “neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute,” nor does a court “construe a

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statute with forced or subtle interpretations that limit or extend its application.” *Town of Bel Air v. Bodt*, 487 Md. 354, 370 (2024).

### **Howard County Charter, Article V, Board of Appeals**

The Board of Appeals is created by the Howard County Charter. *Howard County v. Mangione*, 47 Md. App. 350, 352 (1980). “On November 5, 1968, pursuant to Article XI-A of the Maryland Constitution, the voters of Howard County, Maryland adopted a charter form of government, which, among other things, provided for a County Board of Appeals ....” *Id.* The authority for the County doing so is Section 10-305(a)(1) of the Local Government Article of the Annotated Code of Maryland (“Express Powers Act”), which authorizes a charter county to enact local laws providing “for the establishment of a county board of appeals.” *Id.* at 352 & n.1. Article V of the Charter is Howard County’s exercise of this State authority to establish a board of appeals. “The Howard County Board of Appeals is an administrative body, acting in a quasi-judicial capacity.” *Mortimer v. Howard Research & Development Corp.*, 83 Md. App. 432, 442 (1990). But it has no judicial powers and a hearing before it is not a judicial proceeding. *See Health v. Mayor of Baltimore*, 187 Md. 296, 304 (1946).

Section 501(a) of the County Charter establishes the Board and, in accordance with Section 10-305(a)(2) of the Express Powers Act, provides for “the number, qualifications, and compensation of the members of the board of appeals.” Subsection (a) provides as follows:

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.

Under the rules for interpreting the Charter, the language of Section 501(a) is clear and unambiguous concerning the number of members of the Board and the lack of textual support for alternate members. Under current law, the Board “shall consist of” – i.e., be made up or composed of – five members. The five-member Board is an increase from its original three members pursuant to voter approval of a Charter amendment proposed by Council Resolution 89-1980.<sup>1</sup> The

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<sup>1</sup> An amendment to the County Charter may be proposed to the voters by the County Council or by a petition of the County’s registered voters in accordance with Section 1001 of the Charter.

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amendment proposed, among other things, “to increase the number of members from three to five.” Thus, since its adoption in 1968, the Charter language has been consistently interpreted and applied to set the total number of Board members. Under current law, the Board only has the five members appointed by the Council. No text in Section 501(a) indicates the Board could have any members other than its five members.

Further, the Council’s power of appointment is limited to the five members of the Board. That is, the Council’s power to appoint Board members is exhausted once its five seats are filled by incumbents. “[O]nce the power to appoint has been validly exercised, any subsequent appointment to the same office will be void unless the incumbent has been removed or the office has otherwise become vacant. It is axiomatic that two persons cannot occupy the same office at the same time.” *Goodman v. Clerk of the Circuit Court for Prince George’s County*, 291 Md. 325, 329 (1981) (citing C.J.S. *Officers* § 43). Regarding removal, the Council is empowered to remove a Board member in accordance with Section 903 of the Charter. *See Clark v. O’Malley*, 169 Md. App. 408, 434 (2006) (removal must occur in accordance with the law providing for the removal), *aff’d*, 404 Md. 13 (2008). Regarding vacancy, “[a]n office vacancy may be created by the failure of the person selected to qualify within the prescribed time, by resignation or removal, or by death.” 17 M.L.E. *Officers* § 22 (Feb. 2025) (footnotes omitted). *See also* 67 C.J.S. *Officers* § 164 (Dec. 2024) (“[A]n office becomes vacant by reason of the death, retirement, dismissal, promotion, or other permanent absence of the former incumbent.”) (footnote omitted). Thus, the Council cannot exercise its appointment power over the Board unless and until the Council removes a member, a Board member vacates his or her office, or the term of a member is expiring or is the last permissible one.

### **Other Charter Provisions**

Other Charter sections do provide an alternate for certain County officials and officers. This demonstrates that the Charter’s framers knew how to provide for such a situation, yet they have not done so thus far for the Board in Section 501(a). *See Maryland-Nat’l Capital Park & Planning Comm’n v. Anderson*, 164 Md. App. 540, 577 (This demonstrates that the General Assembly was well aware of how to confer a right of appeal. Yet, such language is noticeably absent in P.S. § 3-108(a)(3).), *aff’d*, 395 Md. 172 (2005).

For example, Charter Section 703 provides for a five-member Personnel Board, the fifth member of which is an employee in the classified service, and for “an alternate who is a member of the classified service and who shall serve on the board only in the absence of the employee member.” Similarly, in the case of a temporary absence of the Chief Administrative Officer or the head of any office or department in the Executive Branch, the Executive may designate a temporary appointee to serve as acting. Charter Section 304(a), (b). The Charter also contains a similar provision for the office of the County Executive if the Executive is temporarily absent or

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disabled. Charter Section 302(g).

The Board's hearing examiner is an example of the need for an amendment to the Charter to change its establishment of the Board. "The Board of Appeals may exercise the functions and powers" as prescribed in Section 501(b) and in implementing legislation passed in accordance with Section 501(f). The language of Section 501(b) authorizes only the Board to exercise the functions and powers so specified. Therefore, when the County Council decided they wanted a hearing examiner for the Board, a Charter amendment was necessary to meet this need given the clear and unambiguous text of Section 501(b) vesting jurisdiction in the Board only. See *Howard Research & Dev. Corp. v. Concerned Citizens for the Columbia Concept*, 297 Md. 357, 364 (1983) (§ 501(b) is "clear and unambiguous"). Accordingly, Section 502 provides: "The County Council may appoint hearing examiners to conduct hearings and make decisions concerning matters within the jurisdiction of the Board of Appeals." In the same way, the current Board membership of five members established by Section 501(a) must be amended to provide alternate Board members. Amending the Charter requires a Charter amendment. Section 1001.

### **State Law**

The need for a Charter amendment is also demonstrated by the State law providing for a board of appeals for non-charter counties and municipalities. That law requires such jurisdictions to provide for the appointment of a board of appeals and for the board to consist of at least three members. Md. Code Ann., Land Use §§ 4-301(a), 4-302(a). In addition to the regular members of the board, these jurisdictions must also "designate one alternate member" for the board. *Id.* § 4-302(f)(1). These jurisdictions may also designate a "temporary alternate" in defined circumstances. *Id.* § 4-302(f)(1). While these provisions are inapplicable to Howard County, they demonstrate that the members of a board of appeals are different from an alternate member. Because Section 501(a) clearly and unambiguously establishes the Howard County Board of Appeals as a five-member board only and does not provide for an alternate, the Charter must be amended to provide for a different membership arrangement for the Board.

### **Two Other Considerations**

As we understand the Board's consideration of the alternate member issue at the meeting on March 27, 2025, the Board appears to be proceeding with its proposal without a Charter amendment on certain grounds. The first is that the Board can only act if a quorum of its members is present and the majority approves the proposed action. This is a correct statement of law. *Gemeny v. Prince George's County*, 264 Md. 85, 88-89 (1972) ("a quorum of the body is required for 'the transaction of business,' and the passage of any motion, ordinance, by-law, or any other permitted act in the absence of a quorum is void"). See *Floyd v. Mayor of Baltimore*, 407 Md. 461, 465 n.2 (2009) ("A quorum is defined as 'that number of the body which, when assembled in their proper place, will enable them to transact their proper business; or, in other words, that

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number that makes the lawful body, and gives them the power to pass a law or ordinance.”). The second is that no single member or minority of the Board can act for the Board. *Board of County Commr's of St. Mary's County v. Guyther*, 40 Md. App. 244, 247 (1978) (“Because only two competent members were present, however, a quorum did not exist. In the absence of a quorum, the vote on the motion to appeal was void.”). This is also a correct statement of law. However, these two statements of law do not provide a legal basis for the Board to have an alternate member or for the Council to appoint them. Without a Charter amendment, the proposed alternate conflicts with Section 501(a) of the Charter as discussed above.

Another consideration for the Board is the effect of an alternate’s participation in a proceeding and decision of the Board without a Charter amendment. If an alternate is unlawful under Section 501(a), which we advise it is, this illegality will provide an aggrieved party with another legal ground for overturning a decision of the Board on appeal. *See Grooms v. LaVale Zoning Bd.*, 27 Md. App. 266, 275 n.4 (1975) (“Because there was then no lawfully created position of hearing examiner, the decision of the person who assumed such an office was held to be void.”).

### **Conclusion**

Use of an alternate for the five appointed members of the Board of Appeals requires a Charter amendment. Using an alternate without an amendment conflicts with Section 501(a) and thus is legally insufficient and could provide a basis for a court to overturn a Board decision made with an alternate member.

cc: Michelle Harrod, Council Administrator  
Kel Berg, Board Administrator  
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**BRIEF IN SUPPORT OF THE INTERPRETATION THAT APPOINTMENT OF  
ALTERNATE MEMBERS TO THE BOARD OF APPEALS DOES NOT REQUIRE A  
CHARTER AMENDMENT**

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**TABLE OF CONTENTS**

<b>Section</b>	<b>Title</b>
I.	Statement of the Issue
II.	Statement of the Facts
III.	Summary of the Argument
IV.	Argument
	A. The Charter Limits the Active Composition of the Board, Not the Total Pool of Appointees
	B. Alternate Members Do Not Serve Concurrently with Regular Members
	C. Common Law and Government Practice Support the Use of Alternates Without Charter Amendment
	D. Maryland Charter Construction Doctrine Supports a Functional Interpretation
	E. The Absence of Explicit Authorization Does Not Imply Prohibition
	F. The Council's Appointment Authority Is Not Limited to Five Total Individuals, and Alternates Are Necessary to Fulfill the Board's Intended Function
V.	Conclusion

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**I. STATEMENT OF THE ISSUE**

Whether the appointment of alternate members to the County Board of Appeals—who serve only when a regular member is absent or recused—violates the Charter provision stating that the Board "shall consist of five registered voters and residents of the County," and thus requires a charter amendment.

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## **II. STATEMENT OF THE FACTS**

Section 501(a) of the County Charter states:

*“The County Board of Appeals shall consist of five registered voters and residents of the County appointed by the Council.”*

The Council is considering appointing alternate members to serve on the Board of Appeals when regular members are absent. These alternates would not serve unless temporarily filling in for a regular member.

Opponents argue that the Charter prohibits more than five total appointees to the Board. Proponents maintain that the Board is limited to five **active members at any time**, and alternates do not exceed that number.

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## **III. SUMMARY OF THE ARGUMENT**

The Charter provision refers to the Board as it **functions in session**, not as a limitation on how many individuals may be appointed to serve as potential members. Alternate members, who serve **only as needed**, never increase the number of individuals **actively sitting on the Board beyond five**.

This approach:

- Preserves the five-member requirement;
- Reflects widely accepted government practice;
- Ensures the Board can continue to function in the absence of regular members;
- Aligns with Maryland legal principles of **practical charter construction**;



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- And respects the rule that **silence does not equal prohibition** where powers are implied and consistent with the charter's purpose.
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#### **IV. ARGUMENT**

##### **A. The Charter Limits the Active Composition of the Board, Not the Total Pool of Appointees**

The phrase "*shall consist of five registered voters and residents of the County appointed by the Council*" is a statement about the **operational makeup** of the Board when convened. A board is not a collection of individuals who are independently appointed; it is a **deliberative body that acts collectively**.

Therefore, the Charter's requirement is satisfied **so long as five individuals are present when the Board is acting**. The Charter does not address, and does not prohibit, the appointment of **additional alternates** who can temporarily serve as part of that five-member body when necessary.

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##### **B. Alternate Members Do Not Serve Concurrently with Regular Members**

Alternate members:

- Serve **only when a regular member is absent or recused**;
- Are **not part of the Board** except while acting in a substitutive capacity;
- **Do not participate in deliberations or voting** unless officially seated.

This structure ensures that **at no time does the Board consist of more than five individuals**, thus remaining fully consistent with the Charter's language.





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### **C. Common Law and Government Practice Support the Use of Alternates Without Charter Amendment**

While § 4-302(f)(1) of the Maryland Land Use Article applies to **non-charter counties**, it reflects the **recognized necessity** of alternate appointments to maintain board functionality.

Absent express prohibition, the power to appoint alternates is implied as a necessary function of governance to preserve continuity and avoid paralysis due to absence or conflict of interest.

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### **D. Maryland Charter Construction Doctrine Supports a Functional Interpretation**

Maryland courts apply the principle of **liberal construction** to municipal charters. In *Montgomery Citizens League v. Green*, 253 Md. 151 (1969), the Court of Appeals held that a charter must be interpreted to facilitate, not hinder, governmental operation.

To read the Charter as barring alternates would frustrate the purpose of the Board and undermine the Council's duty to maintain a functioning body. By contrast, an interpretation that permits alternates while maintaining a five-member Board at all times respects both the **text and spirit** of the Charter.

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### **E. The Absence of Explicit Authorization Does Not Imply Prohibition**

The argument that alternates are prohibited simply because the Charter does not explicitly mention them is legally unfounded. Maryland law does not interpret silence as prohibition where the power in question is **reasonably implied** by an express duty or structure.



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The Council has an express duty to appoint and maintain a five-member Board of Appeals. The appointment of alternates is a **necessary implication of that duty**—allowing the Board to function even when a member is absent. Courts favor interpretations that promote practical governance and reject those that lead to absurd or unworkable results.

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**F. The Council’s Appointment Authority Is Not Limited to Five Total Individuals, and Alternates Are Necessary to Fulfill the Board’s Intended Function**

The Office of Law argues that the Charter allows the Council to appoint **only five individuals** to the Board of Appeals because it states that the Board “shall consist of five... appointed by the Council.” This argument reflects a narrow reading of the Charter and fails both legally and functionally.

**1. The Charter’s Language Sets the Board’s Operating Size, Not a Ceiling on Appointments**

The Charter establishes a **five-member Board of Appeals** consisting of registered voters and residents appointed by the Council. The Charter does not set the quorum requirement; the local Code sets the quorum at **three members**.

The Charter’s language defines the **operational composition** of the Board — that is, five members **when convened and acting**. It does not impose a cap on the **total number of qualified individuals who may be appointed** to fulfill that five-member structure at any given time.

If the drafters had intended to limit the Council’s appointive authority to five individuals total — prohibiting alternates — they would have used express limiting terms. The Charter is



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silent on alternates, and such silence does not imply a prohibition, particularly where alternates are essential to the functioning of the Board.

## **2. Alternate Members Prevent Tie Votes and Default Denials, Ensuring Full Use of the Charter's Five-Member Structure**

While the quorum for Board meetings is three, the Board ideally functions with **five members** as established by the Charter and as found in the recently adopted Rules of Practice and Procedure. When only **four members participate** and the vote results in a tie, this leads to a **default denial of the appeal** under local procedures.

This outcome:

- Denies petitioners a clear decision on the merits;
- Fails to reflect the will of a majority of a full five-member Board;
- And deprives the parties of the **full review and deliberation contemplated by the Charter.**

The appointment of alternates ensures that:

- The Board can **convene with five members** more consistently;
- **Tie votes are avoided**, eliminating procedural denials that do not reflect an adjudicative decision;
- Petitioners receive **the full benefit of a complete Board of Appeals** as intended by the Charter.

## **3. The Appointment of Alternates Is a Necessary and Implied Power**

Even if not expressly mentioned in the Charter, the Council's power to appoint alternates is implied from its duty to maintain a functioning Board. Maryland courts recognize that express



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powers include those reasonably necessary to effectuate those powers. (*Wicomico County v. Todd*, 256 Md. 459 (1970).)

Without alternates, the Board risks failing to function as intended, leading to delays and default denials, which contradict the Charter's purpose.

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## **V. CONCLUSION**

The Council's authority to appoint members to the Board includes implied authority to appoint alternates who ensure the full five-member Board operates effectively. Alternates do not expand the Board or violate the Charter — they ensure the Board functions as the Charter intended, providing fair and full adjudication of appeals.

Item Number	ROP Page Reference ROP V1.17.25	Domain	Issue	OOL Comments	BOA Action	Rationale	OOL Response
1	Page 2, Line 10	INTRODUCTION	Language Specificity	We read the phrase "specific requirements and standards, including" to mean only an existing law applicable to the Board in performing its prescribed functions. If the intent here is to refer to something other than applicable existing law or the Employee Manual, such "standards" should be expressly listed to satisfy due process requirements.	Revised text to read: "must comply with specific requirements and standards included in the Howard County Employee Manual that pertain to Executive Exempt employees"	Provide clarity	Accepted- Issue Resolved
2	Page 2, Line 11	INTRODUCTION	Language Specificity	We read the reference to the "Employee Manual" as an affirmative choice by the Board to make itself subject to the provisions of the Manual, because it only applies to "employees in both the exempt and non-exempt service." Manual, p. 4. While Board members are in the exempt service pursuant to Charter Section 702, they are not "employees" of the County as that term is used in Title I of the County Code.	Add text: "that pertain to Executive Exempt employees"	Provide specific applicable standards	Accepted- Issue Resolved
3	Page 3, line 22	DEFINITIONS	Definition of "Appellant"	Just want to flag that both "Appellant" and "Petitioner" (#37 ) are used in the rules. Given the definitions, consider whether both terms are needed.	Italicize petitioner, strike "contested" from pg 7, line 18	Terms are context specific and have differing meanings based on the case type.	Accepted- Issue Resolved
4	Page 4, lines 11-16	DEFINITIONS	Definition of "Alternate Member"	The OOL believes a charter amendment is necessary to allow for an Alternate member on the BOA.	No change. A legal brief on the Board's position is being provided to Council for their review and final disposition.	The Board believes that legal precedent establishes a charter amendment is unnecessary to allow for an alternate member.	Disputed- Unresolved.
5	Page 4, line 17	DEFINITIONS	Definition of "Board of Appeals Legal Advisor"	The County Solicitors office is required to represent the BOA during an appeal to the courts.	No change needed.	The terms legal advisor describes a function and not a specific person or office. The terms does not conflict with other provisions of the Code.	Accepted-Issue Resolved
6	Page 6, line 7	DEFINITIONS	Term "Egregious"	We recommend removing the word "egregious". Using this second adjective implies non "egregious" dilatory tactics are permissible. The word "egregious" is also arguably vague and ambiguous, which can be a due process problem. The baseline principle here is that "dilatory" tactics by a party in case is cause for unfavorable action by the Board against the party. Dilatory tactics themselves may be grounds for an adverse action. They don't need to be "egregious".	Remove "egregious"	As stated by OOL	Accepted- Issue Resolved
7	Page 7, line 10	DEFINITIONS	Definition of "Majority Vote"	Under Maryland law, a "majority" of 5 is 3. "Four-fifths" of 5 is 4.	This was a typographical error on the draft. Corrected to reflect three-fifths.	As stated by OOL	Accepted- Issue Resolved
8	Page 9, lines 17-18	RULE 1.0 ORGANIZATION	Incompatibility with Charter	We recommend rephrasing or removing the sentence starting with "Each" on line 8 and ending with "member" on line 9. We understand the intent here is to reflect the Council's historic practice of each Council member nominating one individual for the Council's consideration in its appointments to the Board. The sentence does not reflect this intent but rather indicates that each Council district is represented by a Board member, which is contrary to the express language of Charter Section 705(a). "The County Board of Appeals shall consist of five registered voters and residents of the County appointed by the County Council."	Removing reference to members being councilmatic by striking the sentence starting with "Each" on line 8 and ending with "member" on line 9.	As stated by OOL	Accepted- Issue Resolved
9	Page 10, lines 1-22 to p 11, lines 1-12	RULE 1.0 ORGANIZATION	Alternate member Charter issue	the General Assembly enacted Section 4-302(f) pursuant to its power to zone and plan. LU Title 4, Subtitle 3. Second, in the Express Powers Act the General Assembly delegated the power to zone and plan in a charter county to the county. Md. Code Ann., Local Government ("LG") § 10-324 (2013 Repl. Vol. & 2020 Supp.). Accordingly, the County likewise has the power to authorize an alternate member for its Board. Based on the language of Charter Section 501(a) concerning the Board's current structure, our opinion is that a Charter Amendment would be needed to make this change to the Board. Therefore, references to an alternate member throughout the draft Rules of Procedure should be removed and the desire of the Board to have such a member can be communicated to the County Council in another manner.	No change. A legal brief on the Board's position is being provided to Council for their review and ultimate decision.	The Board believes that legal precedent establishes a charter amendment is unnecessary to allow for an alternate member.	Disputed- Unresolved.
10	Page 12, line 15, and throughout document	RULE 1.0 ORGANIZATION	Use of the term "Hearing Authority"	This is a defined term in the Zoning Regulations and means both the Hearing Examiner and the Board of Appeals. Recommend only using the term "Board of Appeals" throughout the Board's rules.	Removing "Hearing Authority:."	Language added elsewhere to clarify that the term Board of Appeals includes the Hearing Examiner.	Accepted- Issue Resolved
11	Page 13, line 14	RULE 2.0 ADMINISTRATIVE OPERATIONS	Code incompatibility	This currently conflicts with Code section 16.801(c)(7).	No change. BOA recommends change to 16.801(c)(7). See companion document.	Rules deconflict role of DPZ and support efficient Board operations.	Accepted
12	Page 15, lines 4-22, to page 16, lines 1-10	RULE 2.0 ADMINISTRATIVE OPERATIONS	Definition of "Board of Appeals Legal Advisor"	Discussion with OOL needed regarding this section	Language updated.	The terms legal advisor describes a function and not a specific person or office. The terms does not conflict with other provisions of the Code.	Accepted- Issue Resolved
13	Page 17, line 12	RULE 3.0 PETITION PROCESS	Petition amendment process	Recommend inserting after "remanded" the following text: "to the prior reviewing agency". Matters can come to the Board from more than one agency.	Revise sentence to say "The Board may order that an amended petition be remanded to the prior reviewing agency, or may request additional agency review as needed."	As stated by OOL	Accepted- Issue Resolved
14	Page 17, lines 15-16	RULE 3.0 PETITION PROCESS	Comment	This should be one of the updates to Title 16 necessitated by the final Board rules. Currently, section 16.801(c)(7) regarding TSRs for the Board do not include such a rule but the Council could add such a rule in (c)(7) as the Council has for the TSRs referenced in (c)(6).	Strike lines 15-16	BOA recommends change to 16.801(c)(7). See companion document.	Accepted- Issue Resolved
15	Page 19, line 5	RULE 3.0 PETITION PROCESS	Text is missing	...by the Administrator <u>when/once</u> the scheduling order is issued.	add "when" after "Administrator"	As stated by OOL	Accepted- Issue Resolved
16	Page 19, lines 20-21	RULE 4.0 PUBLIC NOTICE	Board Administrator role regarding notice	No further newspaper advertising shall be required <del>by any party</del> following the 60-day period.	No change	Text is sufficient as written . OOL misread the proposal.	Accepted- Issue Resolved

A	B	C	D	E	F	G	H
Item Number	ROP Page Reference ROP V1.17.25	Domain	Issue	OOL Comments	BOA Action	Rationale	OOL Response
17	Page 22, line 9	RULE 4.0 PUBLIC NOTICE	County posting responsibility	The current rule includes "attempt" to post the property. The County does not have the power to put a sign on private property without the private owner's permission. Consequently, if permission is denied, County would also be unable to submit an "Affidavit of Posting" under 6.3.	add "attempt to"	As stated by OOL	Accepted- Issue Resolved
18	Page 25, lines 2-3	RULE 4.0 PUBLIC NOTICE	Requirement for a written motion	You may want to consider terminology here. A "motion" asks the Board to take an action. But some "communication" is only relaying information to the Board in writing without a request for Board action.	add "unless otherwise noted" after "Board Administrator" in Line 3.	Instances in which a communication is not a request for action are defined within the rules. The written motion rule originates from direct experience and serves to minimize the risk of impermissible ex parte communication.	Accepted- Issue Resolved
19	Page 26, line 2	RULE 5.0 MEETINGS AND HEARINGS	Witness participation process	The reason for the timing element in these lines is not clear to us. We understand that a testifying witness must adhere to the rules. What does it mean, if anything, to do so "before being called to testify"?	Strike lines 20-22 on p 25, p 26, lines 1-2	As stated by OOL	Accepted- Issue Resolved
20	Page 26, line 3	RULE 5.0 MEETINGS AND HEARINGS	Witness participation process	If this provision is meant to restate the current version of Code Section 2.204(f), language regarding registering to testify should be added. The current draft provides that an individual wishing to testify in opposition must do so before the petitioner's case ends, but an opponent will rarely, if ever, testify in the petitioner's case.	Language added to clarify process.	The updated procedure supports the requirement that a person or entity wishing to become a party to a matter must enter their appearance before a Petitioner's case in chief concludes.	Accepted- Issue Resolved
21	Page 27, line 22 to Page 28 line 1	RULE 5.0 MEETINGS AND HEARINGS	Negative effect of this phrase on record review in court.	If an appeal is taken from a Board decision and the action in this provision is related to an appeal point, the lack of any information in the record might make a bad record for the appeal. The Board might want to consider retaining the correspondence as evidence of lack of compliance and the basis for any subsequent action taken as a result, including not acting on the noncompliant correspondence per the rule.	Add language to read: "Written correspondence submitted to the Board without the required written certification of service shall immediately be rejected and returned by the Board Administrator. The Board shall not consider the communication"	Rule supports the prohibition of impermissible ex parte and is based on experiences when parties have tried to fill the record with unsworn testimony outside of a public hearing.	Accepted- Issue Resolved
22	Page 29, lines 17-18	RULE 6.0 CASES	Jurisdiction of the Hearing Examiner	Currently this conflicts with Code section 16.302(a). For this rule to be sufficient, the Code section would have to be amended.	BOA recommends change to 16.302(a). See companion document.	Rule creates a single clear regulatory doctrine and deconflicts existing regulations which have resulted in judicial inefficiency and generalized confusion.	Accepted
23	Page 29, lines 19-20	RULE 6.0 CASES	Appealability of Board decisions	Recommend using same language that's in Charter Section 501(d). These rules cannot grant a right of appeal to court nor govern an appeal.	Add text to read: "A final decision and order of the Board of Appeals may be appealed to a court of law pursuant to Section 501(d) of the Howard County Charter.	As stated by OOL	Accepted- Issue Resolved
24	Page 32, lines 1-3	RULE 6.0 CASES	Alternate member Charter issue	Based on the language of Charter Section 501(a) concerning the Board's current structure, our opinion is that a Charter Amendment would be needed to make this change to the Board.	No change. A legal brief on the Board's position is being provided to Council for their review and ultimate decision.	The Board believes that legal precedent establishes a charter amendment is unnecessary to allow for an alternate member.	Disputed- Unresolved.
25	Page 32, lines 8-9	RULE 6.0 CASES	Member attendance	This rule might break down if all members sit the first night, then a vacancy occurs during the case, and the matter is heard over multiple nights.	No Change.	The Rules clarify that members who participate during the initial hearing, shall be the same members that participate through final disposition.	Accepted- Issue Resolved
26	Page 33, lines 4-7	RULE 8.0 ETHICAL SERVICE	Mandatory ethics reporting	We do not understand how the chair or the clerk would know whether a member fails to fully comply with the County Public Ethics Law. The Ethics Commission is solely responsible for such matters. A member's filings are in sole custody of the Ethics Commission and disclosure of them must comply with the Ethics Code and the Commission's rules. Regarding the reference to "June," the Board may want to pick a specific date in that month for clarity.	Strike lines 4-7. Remove reference to mandatory reporting of ethical concerns and record retention.	As stated by OOL	Accepted- Issue Resolved
27	Page 33, lines 8-14	RULE 8.0 ETHICAL SERVICE	Prohibition of Board members serving elsewhere.	We read these lines as proposals for the Council's consideration through appropriate legislative action.	No change.	Rule 8.0 (e) and (f) are based on the Board's experiences and originate from the intention to prohibit the appearance of conflict.	Accepted- Issue Resolved
28	Page 33, lines 15-21	RULE 8.0 ETHICAL SERVICE	Mandatory ethics reporting	See comments in row 23 re jurisdiction of Ethics Commission, as well as clarity of date in June.	Delete language related to mandatory reporting of ethical concerns and record retention.	As stated by OOL	Accepted- Issue Resolved
29	Page 41, lines 5-7	RULE 13. APPEARANCES BEFORE THE BOARD OF APPEALS	Characterization of the Board	The Board is an administrative agency under the legislative branch that performs a quasi-judicial function, but it is not a quasi-judicial body. The proceedings before the Board are governed by laws other than the ones listed, including the Code of Howard County Zoning Regulation and federal law (e.g., RLUIPA). The Board may want to use an encompassing term rather than a list, which could become incomplete with the passage of time	Strike "quasi-judicial body" in line 5, change to "administrative agency that performs quasi-judicial functions", add "all applicable law including" after "governed by" on line 6	As stated by OOL	Accepted- Issue Resolved

Item Number	ROP Page Reference ROP V1.17.25	Domain	Issue	OOL Comments	BOA Action	Rationale	OOL Response
30	Page 46, line 9	RULE 13. APPEARENCES BEFORE THE BOARD OF APPEALS	Use of term "legal advisor"	Discuss with OOL re terminology	No change.	The terms legal advisor describes a function and not a specific person or office. The terms does not conflict with other provisions of the Code.	Accepted- Issue Resolved
31	Page 48, line 7-9	RULE 18. DECISION AND ORDER: PROCESS AND ISSUANCE	Decision and Order timelines	Assuming all normal time is used, Law would provide a final to the Administrator on day 45, and the Administrator would provide to members by day 46, and members would have up to day 51 to review and sign. But the Administrator is required to deliver the signed final to parties before day 51, by day 48. Is the reference to the County Solicitor on page 38, lines 8-9 supposed to refer to the Board and the time reference is day 51 and not day 45?	Clarify by adding: "the fully signed" after "mail" on line 8	As stated by OOL	Accepted- Issue Resolved
32	Page 49, lines 21-23	RULE 21. REQUIRED TRAINING. RULE 22. REQUIRED EDUCATION	Board member training requirements	This requirement is within the purview of the Council to impose on members of the Board.	No change. Board recommends Code changes elsewhere. See companion document	For the many reason discussed at length over many work sessions, the rules supports the ongoing professional development of Board members and establishes reasonable minimum competency standards.	Accepted
33	Page 56, line 5	RULE 23. ELECTRONIC SUBMISSIONS	Language Clarification	Is the intent: The board administrator "shall keep the online docket current"?	No change.	Self explanatory in the context of the entire rule.	Accepted- Issue Resolved

## HCCA/Stu Kohn Public Feedback

Item Number	ROP Rough Draft Section	Proposed Change/Question	Status	BOA Action
1	Page 2, line 3	After “501” add “see Appendix A”	Rejected	
2	Page 2, line 4	After “code” add “see Appendix B”	Rejected	
3	Page 3, line 6 – definitions moved up.	Add “Reference Appendix C for definitions relating to this document.”	Rejected	
4	Page 9, line 22 – definitions moved up	Add “for a period of 5 years” after the word “meetings”	Rejected	
5	Page 10, lines 1-22 and page 11, lines 1-12	Question: what is the rationale for proposing “alternate” members”, why is it needed and the advantage of such members?	Answered, no action	
6	Page 11, lines 11-12 – this was corrected in this version	Move 2.1.4 to separate line (corrected in 1.17.25 document)	Accepted	
7	Page 12, line 16	Delete “at least”	Rejected	
8	Page 15, line 6 – shown as “1)” under letter E.	Move 5.1 to a separate line	Accepted	
9	Page 15, line 7	after the word “issues” add “only whenever a member of the Board inquires”	Rejected	
10	Page 16, line 8	strike “contemplate when determining”, change to “determine”	Rejected	
11	Page 16, line 14	Question: why is the Hearing Examiner mentioned?	Answered, left “Hearing Examiner” in	
12	Page 16, line 15	add a period after the word “used”	Accepted	
13	Page 16, lines 18-19	Question: Where is the “Board’s Rules of Procedure Appendix” found in this document?	Answered	
14	Page 17, line 9	Delete the words “only during” and replace with “at least two weeks prior to any” After the word “hearing” and the words “posted to the Board of Appeals website.”	Rejected	
15	Page 19, line 3	Question: why 37 days?	Answered, no action	
16	Page 19, line 17	Question: what two newspapers would you advertise?	Answered, no action	
17	Page 20, line 6	After the word “the” add the word “signage on the”	Rejected	
18	Page 21, lines 13-14	Question: where is the “Board of Appeals Rules Appendix” found in this document?	Answered	Board agreed to strike language after hyperlink
19	Page 22, line 3	Question: where is the “Board of Appeals Rules Appendix” found in this document?	Answered	Board agreed to strike language after hyperlink
20	Page 22, lines 19	Change the word “may elect to” to “shall”	Accepted	
21	Page 23, line 15	delete “Hearing Examiner”	Accepted	
22	Page 23, line 21	delete “24 hours” and change to “two weeks”	Rejected	
23	Page 25, lines 1-3	Question: what is the penalty if the “Ex Parte Prohibition” is not followed?	Answered	
24	Page 25, lines 9-10	Don’t understand the meaning of “Quarterly meetings”	Answered	



## HCCA/Stu Kohn Public Feedback

Item Number	ROP Rough Draft Section	Proposed Change/Question	Status	BOA Action
25	Page 25, line 20	place a “,” comma after the word “Respondent” – delete the word “and” after the word “ witness(es)” add “or any opposition”	Accept, with changes	After "and" insert "any witness", strike "supporting"
26	Page 26, lines 1-2	delete these two lines as this edit should apply to all parties	Accept, with changes	Strike "opposing a petition who wishes", change to "Wishing"
27	Page 26, line 7	add a period (.) after the word “recessed” and delete “unless a continuation date was previously noticed”	Rejected	Capitalize "Official"
28	Page 26, lines 7-8	Don’t understand “It is unnecessary to repost a property following the completion of an initial session”	Answered	
29	Page 28, line 20	The two main categories mentioned are not described.	Rejected	Further described in the Rules (Section C and D)
30	Page 28, line 21	The two subcategories are not defined.	Rejected	same response
31	Page 30, line 14	Define “administrative official”	Rejected	already defined in the Rules
32	Page 30, line 15	Question: what are the “two subcategories”?	Answered	See above
33	Page 31, line 17	after the word “person” add the words “or virtually”	Reject	
34	Page 34, lines 5-7	The cost of the transcript should be defined as “x” per page.	Reject	
35	Page 35, lines 4-5	Question: What does this mean?	Answered	
36	Page 35, line 16	Question: Who is the “Presiding official?” It needs to be defined in the Appendix under Definitions.	Reject	Already defined/self-explanatory. Capitalize
37	Page 35, lines 19-20	Question: by remaining seated how does the party provide 10 hard copies to the Board Administrator?	Answered	
38	Page 35, line 21	Delete “are encouraged” and add “shall”	Reject	
39	Page 37, line 14	Change “may” to “shall”, Delete “any time after 10 business days and replace with “immediately or rule at the next hearing”	Reject	Some cases don't require a response from BOA
40	Page 37, line 20	add “The Board shall not hear any appeals of motions derived from the Hearing Examiner until the final decision of any case heard by the BoA is finalized with a Decision and Order by the Hearing Examiner.”	Reject	request is unlawful
41	Page 37, line 23	delete the word “or” and change to “and”	Reject	
42	Page 38, line 13-14	change “Presiding Official” to “Chairperson”	Reject	Capitalize "Presiding Official"
43	Page 38, line 18	after the word “independently” change to “with the aforementioned rights as the spokesperson.”	Reject	
44	Page 39, line 6 – Rule 13 Subpoenas	Comment: Like that you took our suggestion about not allowing the filing of subpoenas - 21 days before the Hearing and 14 days to issue as stated in the previous Rules of Procedure.	Answered	
45	Page 39, lines 13-14	Question: where is the Appendix found in these Rules?	Answered	
46	Page 40, lines 7-8	Question: where is the Appendix found in these Rules?	Answered	
47	Page 40, line 13	change “may” to “shall”	Reject	
48	Page 40, line 17	“Presiding Official” needs to be defined.	Reject	Capitalize "Presiding Official"
49	Page 40, line 21	change “may” to “shall”	Reject	
50	Page 41, lines 17-18	“Presiding Official” needs to be defined.	Reject	Capitalize "Presiding Official"

## HCCA/Stu Kohn Public Feedback

Item Number	ROP Rough Draft Section	Proposed Change/Question	Status	BOA Action
51	Page 42, line 1	after the word "has" add "been sworn in via the Oath as described in Rule 15," of this document	Reject	Can't swear in someone who is not a witness.
52	Page 42, lines 10 and 11	Should be in reverse order	Partial accept, with changes	Delete "by opposing parties"
53	Page 42, line 14	after the word "Solicitor" add "only when asked by a Board member for clarity are requesting legal advice.	Reject	
54	Page 43, line 8	after the word "Appeals" add "closes the case and"	Reject	
55	Page 45, line 15	change the word "may" to "shall"	Reject	
56	Page 45, line 17	change the word "may" to "shall"	Reject	
57	Page 47, lines 18-21, and Page 48, lines 1-6	Question: why should an "Extension" be permitted?	Answered	Rule currently exists
58	Page 48, line 22	after the words "file a" add "written"	Reject	
59	Page 51, line 1 – move to line 19 on page 50 to alphabetize	move "1.4 Authorized Instructor" after line 6 to alphabetize	Accept	
60	Page 51, lines 10-11	Question: where is the appendix found in this document?	Answered	
61	Page 53, lines 18-23, and Page 54, lines 1-6 – sub-sections 1-4 in this document	sub-section 1.1 thru 1.4 need to be alphabetized.	Accepted	
62	Page 54, lines 7-14	Question: why would automated filing be unavailable?	Answered	Not jurisdiction of BOA, DTCS controls.
63	Page 55, line 16	Question: why "no further description"?	Answered	
64	Page 55, line 23	change "as soon as practicable" to a specific time period.	Reject	
65	Definitions Section – start on Page 3, line 6 and continue through Page 9, line 13	Terms in Definition section need to be alphabetized.	Accept	

Chris Alleva Public Feedback					
Item Number	ROP Section	Type of Comment	Proposal	Status	BOA Response
1	Page 2, line 19	Revision	add "including the Howard County Administrative procedures act" after Howard County	Reject	
2	Page 3, lines 19-20	Comment	This definition adds substantiave reasons, what is an injustice? It may not be a mistake.	Reject	
3	Page 3, line 22	Comment	Need to address standing of parties	Reject	
4	Page 4, lines 11-16	Comment	Good add	Addressed	
5	Page 7, between lines 14 and 15	New Definition	Proposed new definition of "Opposition Case"	Reject	
6	Page 7, Line 17	Comment	Need to define gaining party status	Reject	
7	Page 26, line 2	Comment	Opposition case standing?	Reject	
8	Page 27, line 22	Revision	add "of service" after certification	Accept	
9	Page 29, lines 15-18	Comment	Section 16.302b needs to be amended (same comment as OOL)	Resolved	
10	Page 30, lines 3-11	Comment	Section 16.302b needs to be amended, Interlocutory appeals of Hearing Examiner decisions on motions are not prohibited	Reject	
11	Page 32, lines 8-10	Comment	Need to add attached language (what attached language?)	Reject	
12	Page 32, line 12	Comment	Title is not descriptive	Reject	
13	Page 34, lines 2-4	Comment	Electronic video recordings are considered the official record	No action	
14	Page 34, line 23	Comment	Expert testimony should not be recognized because it prejudices the hearings	No action	
15	Page 37, after line 19	New Text	add the following: "D. The Board shall hear all motions and memorialize their decision in a written order with a detailed summary the motion and the opposition motion, and the relevant law in support of the decision. "	Reject	
16	Page 37, lines 22-23	Comment	Need procedure to establish standing at the outset. Need to fix error in County Code re: 16.100. Need to establish rules for intervenors.	Reject	
17	Page 42, line 9	Revision	add "into the record" after "official documents"	Reject	
18	Page 42, lines 13-14	Question	Why is the County Solicitor permitted to cross-examine?	Answered	need to get clarity, legal advisor
19	Page 43, line 5	Revision	strike "one of a" after "proof"	Reject	
20	Page 43, line 8-9	Revision	insert "on the record" after "deliberate"	Reject	
21	Page 48, after line 11	New Text	add the following: "c. Board administrator shall index all Decisions and Orders"	Reject	

## Joel Hurewitz Public Feedback

Item Number	ROP Section	Type of Feedback	Proposal	Status	BOA Response
1	Definitions	Comment	Why were definitions put in front? Definitions should be alphabetized	Accept/resolved	
2	Page 3, line 9	Comment	Board should only deal with land use appeals, why have this definition?	Reject	
3	Page 3, lines 12-13	Revision	Over-italicized	Corrected during public hearing	
4	Page 4, lines 11-16	Comment	Alternate members not authorized by the Code, same sufficiency concerns as OOL	addressed	
5	Page 4, line 22-23	Comment	This term is defined in the Charter, why define it here?	Answered	
6	Page 6, line 10	Revision	Ex parte definition should be the same as that of Zoning Board	Reject	
7	Page 7, line 10	Revision	Majority vote should be three-fifths	Error was fixed during 1/30/25 public hearing	
8	page 9, line 3	Comment	Suggest rewording that definition or eliminating definition	Reject	
9	Alternate Members Section p 10 lines 1-22 to p 11, lines 1-12	Comment	Same sufficiency concerns as OOL, not authorized by Code	Addressed	
10	Page 12, lines 15-21	Comment	examples of good cause not defined	Reject	
11	Page 13, lines 3-7	Comment	concern with record retention?	Answered	
12	Page 15, line 15	Revision	needs to be semi-colon, not a period	Corrected during public hearing	
13	Page 23, line 21	Revision	24 hours to have agenda available inconsistent with Charter/Code, should be 3 days before	Reject	
14	Page 25, lines 1-3	Comment	Wrong definition of ex parte, it's a "useless phrase"	Addressed	
15	Page 26, line 15	Revision	#3 is too big, font needs revising	Corrected during public hearing	
16	Page 26, lines 18-21	Revision	suggest giving an accident as example of compelling circumstances	Reject	
17	Page 27, line 2	Comment	What is meant by "another jurisdiction"? Not clear	Answered	
18	Page 28, line 21	Comment/Question	what are the "distinct subcategories"?	Addressed	
19	Page 29, line 19	Comment/Question	Which "Court of Law"? The Circuit Court? Specify which court	Addressed	
20	Page 30, line 5	Comment/Question	same question about Court of Law	Addressed	
21	Page 31, lines 6-15	Comment	BOA doesn't deal with non land use appeals, legal sufficiency concern	Reject	
22	Page 31, line 18	Clarification	flip between "Chairperson" and "Presiding official" here and throughout document	addressed	
23	Page 33, lines 4-7	Comment	this is the purview of the Ethics Commission, not the BOA	Addressed	
24	Page 34, lines 10-16	Comment	Does this include videos or large books? Confused on the difference between reports vs technical reports	Answered	Yes, but depends on each case
25	Page 35, lines 19-20	Comment	conflicts with previous section (Rule 9A) about reports, number of hard copies	Accept	Change number of copies to 8 in Rule 9A and in this section and throughout
26	Page 36, lines 15-19	Comment	why is this section necessary?	Addressed	Change 21 days to 14 days (line 18)
27	Page 37, lines 15-16	Comment	suggest re-examining inconsistency between "days" and "business days"	reject	
28	Page 37, line 18	Comment	what is "block font"?	Answered	
29	Page 38, lines 13-18	Comment	don't agree with this section, should only be a licensed attorney able to do this.	reject	
30	Page 39, line 22	Comment	other example of where "Chairperson" is used instead of "Presiding official"	addressed	

**Joel Hurewitz Public Feedback**

<b>Item Number</b>	<b>ROP Section</b>	<b>Type of Feedback</b>	<b>Proposal</b>	<b>Status</b>	<b>BOA Response</b>
<b>31</b>	Page 40, line 22	Comment	Specify which "Court"	Addressed	
<b>32</b>	Page 42, line 16	Comment	what about "re-re-cross" and "re-re-direct"	Reject	Not necessary
<b>33</b>	Page 46, lines 12-13	Question	what if DPZ is not involved in a case?	Answered	DPZ is custodian
<b>34</b>	Page 52, line 9	Question	why require this training?	Answered	
<b>35</b>	Page 53, line 15	Question	why have electronic submissions section at the end?	Answered	
<b>36</b>	Page 55, line 23	Revision	hyperlink missing	Corrected during public hearing	
<b>37</b>	Page 56, line 5	Question	what is meant by "currency"?	Addressed	Change to "currentness"

Citation	Code	Rationale	Reference
<b>TITLE 2 - ADMINISTRATIVE PROCEDURE</b>			
<b>SUBTITLE 2. - RULES OF PROCEDURE OF THE BOARD OF APPEALS</b>		* Recommend relocating the new Board of Appeals Rule of Practice and Procedure to from this subtitle, to a new subtitle 3.	
<b>TITLE 16 - PLANNING, ZONING AND SUBDIVISIONS AND LAND DEVELOPMENT REGULATIONS</b>			
<b>SUBTITLE 3. BOARD OF APPEALS</b>		* Recommend relocating this section to Title 2- Administrative Procedures; Subtitle 2-Board of Appeals.	
Sec. 16.301. Powers.	(d) To hear and decide citations issued, under <b>title 16</b> ; subtitle 16 of this title of <b>the Howard County Code</b> , for a violation of the subdivision and land development regulations set forth in subtitle 1 of this title or the Howard County Zoning Regulations.	* The following rationale applies to nearly all of the subsequent code change recommendations: * These updates are designed to preserve the integrity and clarity of the code while aligning it with recent modifications. Crucially, the changes will reduce fragmentation by establishing a more cohesive framework that evolves consistently over time. As specific sections of the code are updated, the revisions will help mitigate unintended ripple effects that often impact other, seemingly unrelated provisions—thereby reducing the risk of overlooked, outdated elements that create conflict or ambiguity. This forward-looking approach ensures that future code updates are not only more efficient but also more sustainable and aligned with government-wide practices.	

<p><del>Sec. 16.301A- Training.</del></p>	<p><del>Newly appointed members of the Howard County Board of Appeals shall, within six months of their appointment, complete the following:-</del>  <del>(a) Review materials from publicly offered planning courses designed by the Howard County Department of Planning and Zoning that educate residents on how the planning and land development process works; complete in-person or virtual training if such courses are offered and coincide with the requirement period; and</del>  <del>(b) A publicly offered education course designed by the Maryland Department of Planning that reviews certain aspects of land use planning.</del></p>	<p>* Training requirements for BOA members are currently fragmented within existing policy, practice, and Code. Given the comprehensive training and education standards outlined in the proposed Rules of Procedure (ROP), this language is now redundant and no longer necessary. All requirements are proposed in a single codified section to minimize inconsistency and incompatibility.</p>	<p><b>Proposed Rule 21 &amp; 22</b></p>
<p><del>Sec. 16.302- Jurisdiction of Hearing Examiner.</del></p>	<p><del>(a) Except as provided in subsections (b) and (c),— wherever in this Code or the zoning regulations a matter is authorized to be heard and decided by the Board of Appeals, the matter will first be heard and decided by a Hearing Examiner.</del>  <del>(b) Wherever in this Code or the zoning regulations a person is authorized to appeal a decision made by an administrative agency after an opportunity for a contested case hearing, the appeal will be heard and decided by the Board.</del>  <del>(c) The Board will hear and decide a case if the Hearing Examiner position is vacant or the Board determines that the Hearing Examiner is unable to hear the case because of a conflict of interest or other disqualification.</del>  <del>(d) If the Board hears a petition for a conditional use, nonresidential variance, or extension, enlargement or alteration of a nonconforming use under the conditions of subsection (c), then the Board will not make a final decision on the case until it has considered the report of the Planning Board.</del></p>	<p>* This language is redundant and no longer necessary. ROP include delegated authority language similar to intent of 16.203A- HCZR for Zoning Bd HE and R1.02 of the Alcoholic Beverage Hearing Board. *</p> <p>Strike part (c) as unnecessary. Last adopted as CB49-2001, the Planning Board report was required before DPZ issued TSRs with established standards. However, despite the TSR practice and requirement, the language in existing code was never updated to remove the Planning Bd reference. Since the Planning Bd report no longer serves a useful purpose or supports the interest of justice, it should be removed. In practice the Planning Board has long stopped preparing and submitting the reports included in the section.</p>	<p><b>Proposed Rule 3, 5, 6,</b></p>

<p>Sec. 16.303- Hearing examiner procedures.</p>	<p><del>(a) Except for a citation issued under subtitle 16 of this title, a hearing conducted by a Hearing Examiner will comply with the notice and advertising requirements of section 2.203 of this Code, as amended.</del></p> <p><del>(b) A hearing conducted by a Hearing Examiner will be held at such place and time as determined by the Hearing Examiner. The Hearing Examiner shall be prohibited from holding meetings which include an opportunity for public testimony on any day on which Rosh Hashanah, Yom Kippur, Eid Ul Fitr or Eid Ul Adha is observed.</del></p> <p><del>(c) The County Solicitor will provide legal advice and assistance to the Hearing Examiner as requested.</del></p> <p><del>(d) The Hearing Examiner will have the power to issue subpoenas to compel the attendance of witnesses and the production of documents and to administer oaths to witnesses.</del></p> <p><del>(e) Unless otherwise provided by law, the burden of proof in a case heard by a Hearing Examiner will be:</del></p> <p><del>(1) The burden of proof set forth in subsection 2.209(c) of the Code, as amended, except as provided in paragraph (2).</del></p> <p><del>(2) For any case coming before the Hearing Examiner as an appeal of an administrative decision, the burden of proof set forth in subsection 2.210(a)(4) of the Code, as amended.</del></p>	<p>* This language is redundant and no longer necessary. All requirements have been located in a single proposed section of the code to minimize inconsistency and incompatibility.</p>	<p><b>Proposed Rules: Applicability, 3, 5, 6</b></p>
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<p>Sec. 16.304. Appeal to Board of Appeals.</p>	<p><del>(a) A person aggrieved by a decision of a Hearing Examiner may, within 30 days of the issuance of the decision, appeal the decision to the Board of Appeals. Unless the appeal is of a citation issued under subtitle 16 of this title, the Board will hear the appeal de novo in accordance with section 2.209 or subsection 2.210(a) of the Code, as amended, as applicable. The Board will hear the appeal of a citation issued under subtitle 16 of this title on the record in accordance with section 2.210(b) of this Code.</del></p> <p><del>(b) On filing of the appeal, the Hearing Examiner will promptly transmit the entire record or a certified copy of the record to the Board of Appeals and notify the parties of this action.</del></p> <p><del>(c) The person filing the appeal will bear the expense of providing notice of and advertising the hearing.</del></p>	<p>* This language is redundant and no longer necessary.</p>	<p><b>Proposed Rule: 6</b></p>
<p>Sec. 16.305. Terms of service.</p>	<p><del>(b) While holding the position of Hearing Examiner, the Hearing Examiner may not represent any client involving land use in Howard County.</del></p>	<p>* This language is redundant and no longer necessary.</p>	<p><b>Proposed Rule: 1</b></p>
<p><b>SUBTITLE 8. - DEPARTMENT OF PLANNING AND ZONING</b></p>			

<p>Sec. 16.801. - The Department of Planning and Zoning:</p>	<p>(c) <i>Duties and Responsibilities.</i> (7) Other zoning changes. The Department of Planning and Zoning shall receive all <del>petitions</del> <b>applications</b> related to zoning matters, such as conditional uses, variances, and nonconforming uses. The Department shall accept and review these applications and <del>petitions</del> and shall transmit them to the Hearing Examiner for the Board of Appeals. For all <del>petitions</del> <b>applications</b> related to variances in nonresidential districts, conditional uses, and extension, enlargement, or alteration of nonconforming uses, the Department shall prepare findings and analysis in a technical staff report and shall submit the <del>petitions</del>, findings and analysis to the Hearing Examiner for the Board of Appeals. The technical staff report shall be made available to the Hearing Examiner <b>Board of Appeals</b> and the general public at least two weeks prior to any required public meeting or hearing. <del>If the Hearing Examiner approves a petition subject to an amendment or modification of the petition and the approval is appealed to the Board of Appeals, the Department will prepare and submit to the Board its findings and analysis concerning the amendment or modification in a technical staff report. The technical staff report shall be made available to the Board of Appeals and the general public at least two weeks prior to any required public meeting or hearing.</del></p>	<p>* Strike the word "petitions" and replace with the word "applications". Current use of the term petition creates confusion and incompatibility within the Code. The term Application more accurately defines the document submitted to DPZ and deconflicts. The only place the term petition is clearly defined is in Section 501 of the Charter and the ROP. The word has a specific contextual meaning which conflicts with how DPZ uses the term in HCZR.</p> <p>* Stricken language is redundant and no longer necessary.</p>	<p><b>Proposed Rule: 3</b></p>
<p><b>SUBTITLE 16 - ENFORCEMENT OF THE HOWARD COUNTY SUBDIVISION AND LAND DEVELOPMENT REGULATIONS AND THE ZONING REGULATIONS</b></p>			

<p>Sec. 16.1604. Authority of the Hearing Examiner, Board of Appeals.</p>	<p>Authority of the; Board of Appeals . (a) <del>Authority</del> .The shall consider a citation issued under this subtitle for a violation of the subdivision and land development requirements set forth in subtitle 1 of this title or the Howard County Zoning Regulations. (b) <del>Board of Appeals</del> .The Hearing Examiner has all of the powers and authority of the Board of Appeals as set forth in: (1) Title 2, subtitle 2 of this Code; and (2) Subtitle 3 of this title, including the authority to issue subpoenas under section 16.303 of this title.</p>		<p><b>Proposed Rule: Applicability</b></p>
<p>Sec. 16.1605. Hearing:</p>	<p>(a) <del>Hearing Scheduled</del> . The Hearing Examiner shall schedule a hearing on a citation issued under section 16.1603 of this subtitle if: (1) A hearing is requested by the alleged violator or the Department; or (2) The alleged violator fails to pay any fine assessed in the citation. (b) <del>Procedures</del> . A hearing under this subtitle shall be held in accordance with the procedures set forth in subsection 2.210(a) and section 16.303 of this Code. (c) <del>Notice</del> . Notice of a hearing shall be served in the same manner as a notice of violation as set forth in subsection 16.1602(e) of this subtitle. (d) <del>Burden of Proof</del> . In an appeal of a citation issued under section 16.1603 of this subtitle, the burden of proof is on the County to show, by a preponderance of the evidence, that the alleged violator has violated the laws or regulations in question. However, it is the alleged violator's burden to provide all affirmative defenses, including the defense of nonconforming use.</p>	<p>* This language is redundant and no longer necessary, and in some cases directly conflicts with other Code provisions.      * The regulation is contrary to current practice and is outdated. The BOA lacks an effective enforcement mechanism to support the mandate. Based on testimony received during the ROP amendment process from the DPZ and OOL officials, DPZ pursues violations through the court system to promote judicial efficiency and justice and does not seek relief from the BOA.</p>	<p><b>Proposed Rule: 5 and 6</b></p>

Sec. 16.1607. Final order.	<del>(a) <i>Requirement to Issue</i> . After the conclusion of a hearing, the Hearing Examiner shall issue a written final and order.</del>	* This language is redundant and no longer necessary.	<b>Proposed Rule 18.</b>
	<del>(b) <i>Contents</i> . A final order may include:</del>		
	<del>(1) A requirement to abate a violation including a requirement to stop work or restore the property to a lawful condition;</del>		
	<del>(2) A requirement to reimburse the County for any fees or costs incurred; and</del>		
	<del>(3) A civil fine in accordance with section 16.1608 of this subtitle.</del>		

<p>Sec. 16.1608. - Civil fines.</p>	<p>(a) <i>Amount of Fine</i> . A civil fine for a violation of the subdivision and land development regulations set forth in subtitle 1 of this title or the Howard County Zoning Regulations shall be <b>a Class B offense as established Title 24 of the Code.</b> <del>\$250.00 or more per violation and shall not exceed \$500.00 per violation.</del></p> <p>(b) <i>Basis for Fine</i> . A fine imposed under this subtitle <del>is within the discretion of the Hearing Examiner</del> and may not be grossly disproportional to the gravity and severity of the offense.</p> <p>(c) <i>Payment of Fine</i> . All fines:</p> <p>(1) Are due and payable by the date indicated in the citation; and</p> <p>(2) Are payable to the Director of Finance of Howard County.</p> <p>(d) <i>Continuing Violations</i> . Each day that a violation continues after the issuance of a notice of violation or citation is a separate offense and an inspection that indicates that a violation continues to exist is prima facie proof of a continuing violation.</p> <p>(e) <i>Deferral or Conditions of Fine</i> . <del>The Hearing Examiner</del> <b>Board of Appeals</b> may suspend or defer assessment of a fine or may set conditions for the suspension or deferral of a fine.</p>	<p>* This language is redundant and no longer necessary.</p>	
<p>Sec. 16.1609. - Appeal to the Board of Appeals.</p>	<p><del>(a) <i>Appeal</i> . A final order issued by the Hearing Examiner may be appealed by the alleged violator to the Board of Appeals in accordance with section 16.304 of this title.</del></p> <p>(b) <i>Penalties Stayed</i> . If an alleged violator appeals the final order of the Hearing Examiner, the alleged violator may request the stay of any civil fine imposed by a final order pending the final resolution of an appeal.</p>		

<p>Sec. 16.1610. -- Security:</p>	<p><del>(a) <i>Security</i> . If a final order of the Hearing Examiner includes a civil fine and the order is appealed to the Board of Appeals, the alleged violator shall post security in the amount of the civil fine to the Director in a form acceptable to the Director.</del></p> <p><del>(b) <i>Refund of Security</i> . After all appeals are exhausted, if a civil fine:</del></p> <p><del>(1) Is reduced or vacated:</del></p> <p><del>(i) The security shall be reduced proportionately;</del></p> <p><del>(ii) Any surplus shall be returned to the alleged violator; and</del></p> <p><del>(iii) Any balance shall be used to satisfy the civil fine; or</del></p> <p><del>(2) Is not reduced or vacated, the security shall satisfy the fine assessed and accrue to the benefit of the County.</del></p>	<p>* The security provision under the authority of the Board of Appeals has been stricken from the proposed ROP based on current county practice and testimony received during the ROP amendment process.</p>	
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<p>Sec. 16.1612. - County to secure compliance.</p>	<p>(a) <i>Notice</i> . Notice that the County may undertake measures provided for in subsection (b) of this section shall be included in:</p> <p>(1) An order of abatement;</p> <p>(2) An injunction or other order for equitable relief issued by the court;</p> <p><del>(3) A final order issued by the Hearing Examiner; or</del> <del>(4)</del></p> <p><b>3</b>An order of the Board of Appeals affirming or modifying a finding of the Hearing Examiner.</p> <p>(b) <i>County to Secure Compliance</i> . Subject to the notice requirements set forth in subsection (a) of this section, if an alleged violator fails to comply with an order to correct a violation within the time provided in the order, the County may seek a court order authorizing entry on to the property to correct the violation and may procure the performance of the work by County employees or by contract to correct the violation.</p>	<p>* The stricken language is proposed to be removed because it conflicts with language and intent of the proposed ROP.</p>	
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<p>Sec. 16.1613. - Removal of signs and posters.</p>	<p>(a) <i>Required</i> . Any sign or poster announcing a hearing or meeting and required to be placed by this title, title 2, or by the rules of <b>practice and</b> procedure of the Department Board of Appeals, Hearing Examiner, Zoning Board, Planning Board, Design Advisory Panel, Historic Preservation Commission or Cemetery Preservation Board, shall be removed by the applicant or petitioner as follows:</p> <p>(1) Except for resubmission community meeting posters, all signs or posters shall be removed by the 15th day following the conclusion of the meeting or hearing. (2) Presubmission community meeting posters shall be removed by the 15th day following the required minimum posting period.</p> <p>(b) The Department shall notify the applicant or petitioner placing the sign or poster of the removal requirements when a sign or poster is obtained from the Department. (c) Where the applicant or petitioner fails to remove the signs or posters, the Department may remove the signs or posters and assess a fee for each removal from each applicable property that shall be set by Resolution of the County Council.</p>	<p>* The recommendations include long standing grammatical error corrections and technical language adjustments to ensure consistence with other provisions of the Code.</p>	
<p><b>SUBTITLE 6. - HISTORIC PRESERVATION COMMISSION</b></p>			
<p>Sec. 16.606. - Powers of the Commission.</p>	<p>(2) The Commission may perform the following advisory functions:</p> <p>(i) Review applications for zoning text amendments, map amendments, conditional use, or variance approvals and make recommendations to the Zoning Board, Planning Board, County Council, or Hearing Examiner <b>Board of Appeals</b> for:</p>	<p>* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.</p>	
<p><b>TITLE 3 - BUILDINGS</b></p>			
<p><b>SUBTITLE 1. - BUILDING CODE</b></p>			

Sec. 3.101. - Amendments to the International Building Code, 2021 Edition	<p>(38) Section 113 Board of Appeals.</p> <p>113.1 <i>Application for appeal</i> . Except for a notice of violation, a person may appeal the approval, denial, revocation, suspension, or extension of a permit to a <del>hearing examiner</del> of the Howard County Board of Appeals. An application for an appeal shall be based on a claim that this Code has been incorrectly interpreted, the provisions of this Code do not apply, or an equally good or better form of construction is proposed. A notice of violation may not be appealed.</p> <p>113.2 <i>Board of Appeals</i>. The Howard County Board of Appeals' <del>Hearing Examiner</del> shall hear and decide appeals in accordance with the procedures set forth in <del>title 16, subtitle 3</del> of the Howard County Code. <del>Neither the Board of Appeals' Hearing Examiner nor the Board of Appeals</del> shall <b>not</b> have <b>the</b> authority to waive requirements of this Code.</p>	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	
<b>SUBTITLE 2. - ELECTRICAL REGULATIONS</b>			
Sec. 3.220. - Appeal of decision to revoke, deny, or suspend a permit.	<p>(b) Within 30 days of the date of an order, a person aggrieved may appeal the order to suspend, revoke, or deny a permit to the Howard County Board of Appeals <del>Hearing Examiner</del> in accordance with the procedures set forth in <b>the title 16, subtitle 3 of this Howard County</b> Code.</p>	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	
<b>SUBTITLE 3. - PLUMBING AND GASFITTING REGULATIONS</b>			
Sec. 3.304. - On-site utility contractor's license.	<p>(3) Appeals. Within 30 days of the date of the decision, a person aggrieved by a decision of the authority having jurisdiction to revoke, deny, suspend or approve any on-site utility contractor's license may appeal the decision to the Howard County Board of Appeals <del>Hearing Examiner</del> pursuant to the procedures set forth in <del>title 16, subtitle 3</del> of the Howard County Code.</p>	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	

Sec. 3.305. - Permits.	(k) Appeals. Within 30 days of the date of the decision, a person aggrieved by a decision of the authority having jurisdiction to approve, suspend, revoke, extend, or deny a plumbing permit or a permit for on-site utility work may appeal that decision to the Board of Appeals Hearing Examiner pursuant to the procedures set forth in title 16, subtitle 3 of the Howard County Code.	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	
<b>SUBTITLE 7. - PROPERTY MAINTENANCE CODE FOR RENTAL HOUSING</b>			
Sec. 3.700. - Howard County Property Maintenance Code for Rental Housing.	(26) Subsection 112.6 Hearing. A person may appeal an order to take emergency measures to a Hearing Examiner of the Howard County Board of Appeals in accordance with the rules of procedure set forth in title 16, subtitle 3 of the Howard County Code.	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	
<b>TITLE 15 - NATURAL RESOURCES</b>			
<b>SUBTITLE 5. - AGRICULTURAL PRESERVATION</b>			
Sec. 15.503. - Agricultural Preservation Board	(h) Duties and Responsibilities. The Board shall have the following duties: (3) For the Hearing Examiner, the Board shall review and make recommendations on commercial solar facility and other conditional uses sought on easements as provided in the Howard County Zoning Regulations.	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	
<b>TITLE 14 - LICENSES, PERMITS AND INSPECTIONS</b>			
<b>SUBTITLE 9. - RENTAL HOUSING LICENSE</b>			
Sec. 14.904. - Appeal.	Any aggrieved person may appeal a decision of the Director to revoke, deny, suspend, or approve a rental housing license under this subtitle to a Board of Appeals Hearing Examiner in accordance with title 2, subtitle 2 of the Howard County Code.	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	