



Howard County Board of Appeals
George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043-4392

**BRIEF IN SUPPORT OF THE INTERPRETATION THAT APPOINTMENT OF
ALTERNATE MEMBERS TO THE BOARD OF APPEALS DOES NOT REQUIRE A
CHARTER AMENDMENT**

TABLE OF CONTENTS

Section	Title
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

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.

II. STATEMENT OF THE FACTS



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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."

At the request of the Board of Appeals, the County 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.

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**;
- 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 serve independently; 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.

B. Alternate Members Do Not Serve Concurrently with Five 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 entirely 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.

This approach is consistent with ****103 Op. Att'y Gen. 3 (2018)****, in which the Maryland Attorney General confirmed that county boards may lawfully use alternate members to temporarily substitute for regular members, **even in the absence of explicit statutory authority**. The opinion emphasized that such use does not expand the board's defined size or composition and reflects a reasonable and longstanding governmental practice. The OAG noted that alternates preserve board functionality and prevent governance breakdowns caused by absences or recusals—precisely the concern the Council seeks to address here.

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.

Similarly, in *Huffman v. State*, 356 Md. 622 (1999), the Court reaffirmed that statutory and charter provisions **must be interpreted with common sense** and in light of their practical



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consequences. The Court emphasized that it "avoid[s] constructions that are illogical, unreasonable, or inconsistent with common sense," *id.* at 628, favoring interpretations that reflect the realities of governance rather than rigid formalism.

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.

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 a prohibition** where the power in question is **reasonably implied** by an express duty or structure.

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.

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 County 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...*



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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. It defines the operational makeup of the Board **when convened and acting**, not a total cap on the number of eligible appointees available to serve. If the drafters had intended to limit the Council's appointive authority to exactly five individuals, they would have used express limiting language.

As the Maryland Court of Appeals explained in *Huffman v. State*, 356 Md. 622 (1999), courts "*avoid constructions that are illogical, unreasonable, or inconsistent with common sense.*" Id. at 628. An interpretation that would force the Board to deadlock, cancel hearings, or deny appeals by default simply due to temporary absences is precisely the type of impractical and absurd outcome Maryland courts avoid. The Charter should not be construed to compel dysfunction where a **reasonable, practical** reading is available.

2. Alternate Members Prevent Tie Votes and De Facto Dismissals, 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 Board of Appeals Rules of Practice and Procedure. When only **four members participate** and the vote results in a tie, the appeal is dismissed under local procedures. The Board's inability to render a decision based on the merits of a case resulting from a lack of alternates or structural issues deprives the



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public of a **legitimate expectation of a hearing and decision on the merits**, violating the intent of the County Charter or due process principle.

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

This understanding is further supported by ****103 Op. Att'y Gen. 3 (2018)****, where the Attorney General explained that **appointing alternates is within the implied authority** of a governing body when necessary to carry out its express duties. The opinion reasoned that a strict



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reading prohibiting alternates would lead to dysfunction and default denials, undermining the board's purpose—exactly the result the Charter seeks to avoid.

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

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.