
From: Christopher J. Alleva <jens151@yahoo.com>
Sent: Monday, July 21, 2025 11:57 AM
To: CouncilMail
Cc: Harrod, Michelle
Subject: CB 57-2025 Testimony BoA Rules
Attachments: Board of Appeals Rules Testimony.pdf; CB 57-2025 Summary of Alleva testimony.pdf; Board of Appeals Open Meeting Act Violatiions.pdf

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Please find the testimony of Chris Alleva for CB 57-2025

July 21, 2025

Christopher Alleva

The Howard County Board of Appeals

Testimony on Rules of Procedure Opening Statement

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 of valuable property rights and affect the public's physical welfare.

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 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 unfair, and the burden is on the Board to ensure the hearings they conduct are fundamentally fair. Allowing the petitioner liberality in presenting their case in chief, while restricting the opposition case is not fundamentally fair.

The Board has not always lived up to the ideals of fundamental fairness and due process of law. Here are some examples:

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.
2. These 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 Among other things, there are mis-references to State law sections that have been repealed and replaced; there are no rules covering virtual hearings; the burden of proof for administrative appeals has no evidentiary standard and is conflicted with a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.
3. Citizens often contact Council members with violation of due process allegations. How are these complaints handled? Who has jurisdiction? Can the Council be provided 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? If a party does this what are the consequences?

6. Do the Boards rules permit re-deliberation or re-voting? What recourse do parties have regarding Board misconduct?

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

Joel Hurewitz Public Feedback

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January 23, 2020

VIA First Class and Electronic Mail:

The Honorable Deb Jung, Chairperson,
Howard County Council
Howard County, Maryland
3430 Courthouse Drive
Ellicott City, MD 21043

Subject: **Howard County Board of Appeals multiple violations of the Maryland Open Meetings Act 14 Official Opinions of the Compliance Board January 8, 2020**

Dear Chairperson Jung:

The undersigned Howard County Citizens individually and in their capacities as officers of several Community and Civic Associations of Howard County are writing to urge the County Council to order an investigation into violations of the Open Meetings Act by the Howard County Board of Appeals as found by the Maryland Office of the Attorney General's, Open Meeting Compliance Board (the "OMCB").

The Opinion, a copy of which along with the complaints, yes plural, and the County's responses are attached and enclosed, found that the Board failed to: 1.) keep minutes of their deliberations; 2.) ignored or omitted matters before them for consideration; and 3.) since there were no minutes they could not formally adopt them in subsequent sessions, as required by law or post nonexistent minutes and make them available to the public, again as required by law.

We believe this is a very serious matter and have grave concerns that Howard County Citizens may have been denied their entitled rights to due process. It appears the failure to minute Board deliberations commenced sometime in 2015. In their Opinion, the OMCB wrote:

"...Here however we are startled, especially in light of the training requirement, that such a longstanding public body simply stopped complying with two longstanding and basic requirements of the Act and also chose not to comply with a third more recent requirement."

Under the Maryland Open Meetings Act, the OMCB was established to provide guidance and support to the State's many Boards and Commissions, it does not employ investigators, nor does it have punitive powers beyond the acknowledgement requirement that compels the violating Board to own up to its violation in an open public hearing and have the Board members admit their violations by signing an acknowledgement form.

In view of the limited powers and capabilities of the OMCB, we believe it is in the Public Interest for the Council to conduct a full investigation of this serious breach of the public trust by what is perhaps the most powerful County Board. The Office of Law obviously cannot

January 23, 2020

The Honorable Deb Jung, Chairperson

The Howard County Council

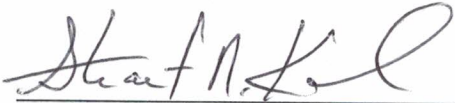
Subject: Board of Appeals Open Meetings Act Violations Investigation Request

investigate itself. Accordingly, to avoid the appearance of or an actual conflict, the Council should retain an outside independent counsel to conduct this investigation.

The scope of this investigation should include a thorough review of all cases heard from 2015 to present to determine if the rights of any parties were violated, and if so, what remedies are available in the law regarding procedural requirements, such as remand or rehearing. Second, the Office of Law's responses should be reviewed to determine if misrepresentations were made to the OMCB and third, Board members and their counsel should be requested to explain why the Board as the OMCB said: *"simply stopped complying with two longstanding and basic requirements of the Act."*

It is imperative that procedures be implemented to ensure that this never happens again and that citizen's rights to due process are guaranteed by Howard County. We also hope that an investigation may provide more details that would aid an effort to provide better enforcement of the Open Meetings Act, and perhaps legislation with repercussions for non-compliance. Given the gravity of this matter we would hope and expect that the Council formally respond to this request in a timely manner.

Respectfully Submitted,



Howard County Citizens Association

By: Stuart N. Kohn, President

[ADDITIONAL SIGNATORIES CONTINUE ON PAGE 3, 4 AND 5]

Enclosure

[ADDITIONAL RECIPIENTS CONTINUE ON PAGE 6]

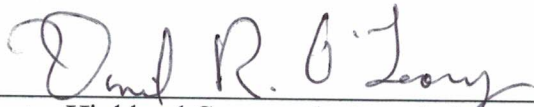
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The Honorable Deb Jung, Chairperson

The Howard County Council

Subject: Board of Appeals Open Meetings Act Violations Investigation Request

[ADDITIONAL SIGNATORY]

A handwritten signature in dark ink, appearing to read "Dan R. O'Leary", written over a horizontal line.

Greater Highland Crossroads Association

By: DAN O'LEARY, CHAIR

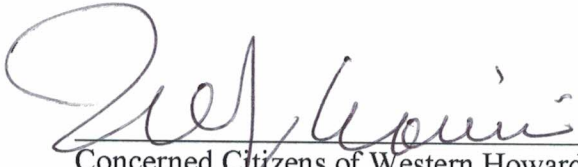
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The Howard County Council

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[ADDITIONAL SIGNATORY]



Concerned Citizens of Western Howard County

By: THEODORE F. MARIANI, Pres.

January 23, 2020

The Honorable Deb Jung, Chairperson

The Howard County Council

Subject: Board of Appeals Open Meetings Act Violations Investigation Request

[ADDITIONAL SIGNATORY]

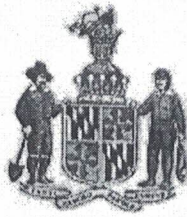
A handwritten signature in dark ink, appearing to read 'Lisa Markovitz', is written above a horizontal line.

The People's Voice

By: Lisa Markovitz, President

LAWRENCE J. HOGAN, JR.
Governor

BOYD K. RUTHERFORD
Lt. Governor



APRIL C. ISHAK, ESQ.
CHAIR

NANCY MCCUTCHAN DUDEN, ESQ.
PATRICK S. MEIGHAN, ESQ.

STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

14 Official Opinions of the Compliance Board 3 (2020)

Howard County Board of Appeals

January 8, 2020

This opinion follows close on the heels of 13 *OMCB Opinions* 65 (2019), which involved allegations by the same complainant that the Howard County Board of Appeals had violated the Act by failing to audio-record the portion of a hearing in which the County Board deliberated on its decision and by failing to provide adequate minutes. Responding to that complaint on the County Board's behalf, the County Attorney asserted as to the first allegation that the Act does not require public bodies to audio-record their meetings. Indeed, the Act indeed does not so require, so we found that the County Board did not violate the Act in that regard. *Id.* Regarding the second allegation, the County Board provided us with an untitled document that the response described as "written minutes" and that contained the information required by the Act. On that issue, we stated: "Assuming that the County Board adopted that document as minutes, we conclude that the County Board did not violate § 3-306(c)(1)."¹

Complainant's request that we now reconsider 13 *OMCB Opinions* 65 alleges that the County Board had *not* adopted that document as minutes, that the County Board had not provided him with minutes upon his request for them, and that staff had told him that the County Board had not taken written minutes for several years. Responding to those allegations, the County Attorney detailed the procedures followed by the County Board's staff. In a nutshell, staff uses software that "include[s] audio-recording and written recording with automatic date and time entry generation." Staff audio-records the meeting and "use[s] the written recording function to contemporaneously type entries into the written record during the hearing." It is not apparent from the response that any member of the County Board reviews the result, which are referred to as "typewritten notes" and which, the response asserts, "may serve as minutes." Another gap left by the submissions is how staff addresses requests from the public for the County Board's minutes. Regarding this matter, the submissions yield a tangled tale on what happened when either the complainant or someone on his behalf appeared at the County Board's office and asked to

¹ Statutory references are to the General Provisions Article of the Maryland Annotated Code.

see its minutes. However, the upshot is that staff did not provide either “minutes” or the notes to that requester. And, because the audio was turned off before the County Board deliberated, no notes were made for that portion of the meeting, and no audiotape was available. Finally, the response states that the complainant’s earlier complaint had prompted a review of the County Board’s procedures and that the County Board has now “implemented new procedures to timely adopt its minutes.” From the County Board’s website, we see that the County Board formerly adopted minutes and, until some point in 2015, posted them online.

Several provisions of the Act are relevant here. First, “as soon as practicable after a public body meets, it shall have minutes prepared.” § 3-306(b)(1). “Minutes,” we have long explained, do not exist as “minutes” until the public body has adopted them. *See, e.g., 2 OMCB Opinions* 11, 13 (1998) (“As a legal matter, the ‘minutes of a public body’ become such only after the public body itself has had an opportunity to review and correct the work of whoever prepared the draft minutes.”); *7 OMCB Opinions* 83, 84 (2011) (“[D]raft minutes that are not reviewed and approved by the public body do not satisfy [the minutes] requirement.”). As exceptions to that rule, a public body may choose to adopt a practice of using live and archived audio or video streaming as its minutes instead of written minutes, §3-306(b)(2), or legislative bodies may report their votes on the Internet, but neither exception applies here. Because the County Board did not adopt staff’s typewritten notes (or any other document) as minutes, we find that the County Board violated § 3-306(b)(1). As noted in our earlier opinions, the violation is not merely technical. Minutes are the mechanism by which the public body itself discloses its meetings events to the public, and the decision on what to include, or omit, is for the members of the public body, not staff.²

Second, except for the sealed minutes of a properly closed meeting, “minutes of a public body are public records and shall be open to public inspection during ordinary business hours.” § 3-306(d). We understand that staff could not provide “minutes” to a member of the public who asked to see “minutes,” given that the County Board had not adopted any. We do not understand why staff did not at least provide the typewritten notes, or, apparently, even explain that such a thing existed—especially in light of the assertion in the response that the “typewritten notes may serve as minutes.” At any rate, we find that the County Board violated § 3-306(d). And, a public body’s failure to adopt minutes and produce them for inspection, especially viewed in conjunction with its decision to stop recording its meeting when it began its deliberations on the matter at hand, does not serve

² For guidance on what minutes must contain, we refer the County Board to *Floyd v. Baltimore City Council*, 241 Md. App. 199, 218-19 (2019), as well as to the Compliance Board opinion and Open Meetings Act Manual chapter cited there.

the Act's policy that access to meeting information "increases the faith of the public in government." *See* § 3-102(b)(stating the policy of the Act).

The third relevant provision is the requirement that a public body post its minutes online "[t]o the extent practicable." § 3-306(e). We have no facts on what might have been "practicable" for the County Board in 2019, but we note that the County Board found it practicable to post its minutes online in 2015, even before the requirement was enacted, and that it currently posts its decisions online. We do not reach a conclusion on this issue, which was not addressed in the submissions, and we raise it only to bring the requirement to the County's Board's attention in its review of its meeting procedures.

Usually, a public body's acknowledgment of a deficient practice and its undertaking to review its procedures have made our further guidance unnecessary. Here, however, we are startled, especially in light of the training requirement, that such a longstanding public body simply stopped complying with two longstanding—and basic—requirements of the Act and also chose not to comply with the third, more recent, requirement.³ Because it is not clear to us what went wrong here, we have gone into some detail so that the relevant principles will be conveyed to the County Board when, as required by the Act, a member summarizes this opinion in open session. *See* § 3-211.

Conclusion

In conclusion, the County Board violated the provisions of § 3-306 that require public bodies to adopt minutes and to make them available for inspection by a member of the public who asks for them. We encourage the County Board's endeavor to review and revise its meeting procedures. This opinion is subject to the acknowledgment requirement set forth in § 3-211.

Open Meetings Compliance Board

April C. Ishak, Esq.

Nancy McCutchan Duden, Esq.

Patrick S. Meighan, Esq.

³ It may be that the County Board, which describes its functions as "quasi-judicial," has deemed its proceedings to be exempt from the Act under the exclusion for meetings at which a public body solely performs quasi-judicial functions. However, that exclusion has not applied to most land use matters since 1991. *See* 1991 Laws of Md., ch. 655. Or, it may be that the County Board has looked only to its bylaws and County laws as the controlling authority for its meeting practices. That possibility is suggested by the County Board's bylaws, which do not address minutes at all. (The bylaws also contain a provision, § 2.204(d), that seemingly permits the County Board to routinely give notice "one day prior to the meeting or hearing"—a provision that, if implemented on a routine basis, would likely lead to violations of the Act). Whatever the cause of the violations found here, we encourage the County Board to address it.

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