

Written Comment Received from Ms. Lancos on 2 June 2022:

Thank you for listening to my testimony at the hearing on June 1, 2022. I have attached an electronic copy of my testimony.

I was disappointed that many of the comments you received were attempts to re-argue previous Zoning Board cases rather than specific recommendations regarding the existing Rules of Procedure.

I would like to reiterate a point made by Joel Hurwitz. Mr. Hurwitz noted that under the Order of Presentation, there is no specific place for people not part of the Petitioner's case to testify in favor of the request. I have often testified at hearings on my own behalf and not as part of the Petitioner's case. Although I have never had trouble doing so despite no specific notation for "Supporters" to speak out, it is important for the Rules of Procedure to recognize that just because someone is not part of the Petitioner's case they are not automatically a "Protestant." Without an official spot for my testimony, some observers may believe that I am part of the Petitioner's formal case. That is seldom the case as I am a very independent person and generally speak my own mind.

I would also like to reiterate my concern about where in the proceedings DPZ should present. I, once again, strongly advocate for DPZ to have an initial role in "setting the stage" for the case and present the facts as submitted. This piece would not be subject to cross examination. Once the Petitioner's case is completed, DPZ could then provide its subjective findings as to whether they believe the criteria has been met. This would be the opportunity for cross examination by the public and the Zoning Board.

I hope you will spend additional time further updating the Rules before voting. Alternatively, perhaps you could simply vote on the sections on the Hearing Examiner and Virtual Proceedings and save any other changes after a more complete review has occurred.

Joan Lancos

## Written Comment Received from Mr. Hurwitz on 3 June 2022:

Dear Members of the Zoning Board,

Herein please find my comments for the proposed amendments to the Zoning Board Rules of Procedure.

I reiterate many of the issues previously raised, especially those pertaining to Section 202(g) of the Howard County Charter, that amendments to the Columbia PDP and CEF are floating zones, that they are piecemeal zoning and therefore the Zoning Counsel must participate. I therefore incorporate by reference and restate, as if included herein, the relevant portion(s) of the following:

- Testimony for CB50-2021
- Protestant Joel B. Hurewitz's Motion for Declaratory Rulings and Referral to the Howard County Council for Legislative Action as Required by Section 202(g) of the Howard County Charter filed in HRVC (especially paragraphs 8, 11, 13, 16, 20, 21, 31-38, and 43-57).
- Protestant Joel B. Hurewitz's Memorandum in Support of Motion for Declaratory Rulings and Referral to the County Council as Required by Section 202(g)
- Motion for Reconsideration and Declaratory Rulings filed in Enterprise
- Motion for Reconsideration filed in Erickson
- Motion for Declaratory Rulings and Memorandum filed in Erickson
- Closing Memorandum filed in Erickson (pages 1 and 6).

### **General Comments**

#### **Campaign Affidavits**

Campaign contribution affidavits are not mentioned in the Rules. This has been an issue in Erickson and other matters, and its omission is notable.

#### **Consideration of Motions**

Motions should be decided in reasonable time –not immediately as suggested by Stu Kohn.

#### **Subpoenas**

The ability of the Zoning Board and Hearing Examiner to issue subpoenas must be addressed.

#### **Hearing Examiner Must be Appointed by Council Resolution**

Hearing Examiners must be appointed by resolution of the Council specifically to hear the cases before the Zoning Board. Their contracts do not include the Zoning Board. More information regarding the Charter's requirement that the Hearing Examiners and Zoning Counsel be appointed by resolution of the Council will be provided at a future time.

#### **Declaratory Rulings**

Do the Hearing Examiners have power to make binding declaratory rulings as provided in the Rules and Administrative Procedure Act?

#### **Republish Rules**

Board should make substantial edits to the Rules and republish for a new hearing. Because the Board cannot act until December in Levering and Courthouse another month will not cause any delay.

#### **Courthouse**

How to continue the Courthouse case midstream? Re-cross of Geoff Goins is next. There needs to be special transition rules just for Courthouse. DPZ presentation has already gone first. Does this case go to the Hearing Examiner? Does the Hearing Examiner listen to the recording for the proceedings of the Zoning Board?

### **Page 3**

#### **A 2.a. Petition Forms**

The petition forms are provided and Erickson's form was Petition to Amend the Zoning Maps so why does everyone treat CEF as a map amendment other than the Office of Law? This distinction goes to 202(g) and participation of Zoning Counsel.

### **Page 4**

#### **2.a. Individual Petitions**

How does the Hearing Examiner waive fees? The Board is referenced in the first and last sentence.

### **Page 5**

#### **2. Posting of Property**

Why reference to Section 2.203 for Board of Appeals Rules for Notice? Seems it should be Section 16.1613.

#### **C.5. Responsibility for Ensuring Compliance with Posting Requirements**

Appears that "for" was omitted: THE HEARING EXAMINER SHALL NOTIFY THE BOARD FOR REVIEW.

### **Page 6**

#### **D.2. Presentation**

"agreement of all parties" - Problem of who all of the parties are. Attorneys did not treat all of the opponents as parties. The attorneys did not send copies of motions or correspondence. Only attorneys were permitted to participate in HRVC mediation.

Exhibits - Must be kept by the Administrator and hosted on the County website and not hosted by Bohler Engineering or William Erskine's Dropbox as is still the case in Erickson. (See Motion for Reconsideration filed in Erickson).

### **D.3. Order of Presentation and Burden of Proof**

"In piecemeal map amendment petition cases, the Zoning Board OR HEARING EXAMINER shall limit the hearing to evidence relevant to the applicable criteria which would justify the requested rezoning." So is CEF with criteria a piecemeal map amendment? If it is a development plan as stated in D&O, then why did the Board consider CEF criteria? If it is piecemeal, then the Zoning Counsel should have participated. If the case is neither piecemeal, nor a development plan (amendment to the PDP), then the Hearing Examiner does not have jurisdiction under CB77-2021.

D.3.a. Clarify what are included in reports and official documents? Notice to neighbors are not official documents.

Not sure of the rationale for DPZ appearing after the petitioner. See testimony of Joan Lancos.

Need to renumber D.3. because "d" was omitted

When do supporters of a petition testify on their own behalf?

## **Page 8**

Signing up to testify is now before the DPZ presentation summarizes the issues in the petition.

It deprives the opponents of due process to require that all witnesses sign up prior to hearing the petitioner's case. How do they know what all of the issues will be particularly over many weeks or months of testimony? The opposition does not know when the Petitioner will be completing its case. How are they to prepare surrebuttal witnesses at the beginning of the case? Instead, a registered party should be allowed to call anyone as a witness. The Petitioner's witnesses should not be required to sign up to testify and then get notices as independent parties for motions and appeals.

### **11. Communications Outside of Hearing**

This is not grammatically clear about all of the prohibited contacts between all of the persons. It needs to be clarified with numbers and semicolons clearly designating each prohibited contact.

### **13. Parties.**

An individual or any other legal entity may become a party to the proceedings before the Board OR HEARING EXAMINER by: a. Providing the name, address and signature of the party and/or of the legal entity's duly authorized representative on a sign-up sheet provided by the Board OR HEARING EXAMINER.

This needs to include an email address for exceptions.

## **Page 9**

### **14.a. Who may appear**

Needs to include sole proprietorships, LLCs and estates

Attorneys did not treat everyone who testified in Erickson to be parties.

Mediation in HRVC was limited to attorneys.

People who just testify do not really want to be parties --- they do not know what to do when they receive motions and judicial review materials.

Montgomery County Land Use Rules of Procedure should be used as a model for distinction between "parties of record" and "participants." People who just testify in favor or in opposition and do not cross examine or file motions should be given the opportunity to opt out of being a party and just be a "participant."

### **Montgomery County Land Use Rules of Procedure**

#### **3.1 Parties of Record.**

- a) Under these Rules, "parties of record" include applicants for a zoning action or a conditional use, individuals and organizations testifying at an OZAH public hearing and those who have requested and been approved by the Hearing Examiner to be parties of record. Anyone may testify at the OZAH public hearing and will be automatically considered a party of record. Testifying before the Planning Board or other agency will not make a person a party of record to an OZAH proceeding.
- b) Persons who do not wish to testify may request to be classified as a party of record by filing a written request, signed by the individual or an authorized agent, and demonstrating that other parties of record will not adequately represent the interests of the person or organization seeking to become a party of record.
- c) All parties of record must provide contact information, including an address, telephone number and email address.
- d) Being designated or not designated as a party of record as defined in these Rules does not determine a person's right to appeal to the courts or to request oral argument before the Council or the Board of Appeals. The person's right to appeal or request oral argument is governed by the Zoning Ordinance and by state law.

#### **3.2 Participants. Participants are those persons who submit written comments on an application for consideration in the record, but who are not parties of record.**

- a) Participants are not required to mail copies of their written submission(s) to other participants or to parties of record; nor will other participants or parties of record be required to send copies of motions, orders, or other submissions directly to participants who are not parties of record. However, all submissions will be available for public viewing in the case file maintained by OZAH.

- b) OZAH will send individual notice of hearings to participants only if they are adjoining or confronting property owners, civic and homeowners associations or municipalities within 1/2 mile of the subject site; OZAH will send participants a notice of the Hearing Examiner's report and recommendation to the Council or decisions in conditional use cases, only if they are parties of record. Copies of such reports and recommendations and decisions will be available for viewing on OZAH's website and at OZAH's office.
- c) All submissions made by participants must be in writing and signed by the individual or an authorized representative.
- d) Signed, written comments timely submitted to OZAH by participants will be considered in evaluating the case, but not necessarily given the same weight as statements that are made under oath and subjected to cross-examination at the hearing.

[https://www.montgomerycountymd.gov/OZAH/rules-of-procedure.html#\\_Toc393288987](https://www.montgomerycountymd.gov/OZAH/rules-of-procedure.html#_Toc393288987)

F.

Are witnesses allowed to communicate with counsel or parties during breaks in testimony? This would be allowed in-person.

## **Page 10**

Style would seem to have periods after the numbers ie. "2.1.1." and "3.3." on page 11.

### **2.3 Staging and Venue**

Seems to require video and not phone or issues for video. Why is this a new requirement?

Video must capture table - When have tables for most people ever been shown? Why is this required? Most people do not show tables in county hearings or in other court cases around the country. Any documents on the table will not be in focus and will be upside down.

## **Page 11**

### **3.2 .Use of Documents**

Are new documents allowed in cross examination? Attorneys have routinely objected to impeachment documents.

### **3.3. Objections**

Parties of record who are not represented by counsel need to be elevated and not be muted to make objections.

## **Page 12**

A(4) Zoning Counsel not on list to get Report

## **B. Exceptions**

The Rule repeats County Code Section 16.203A(d)(3) which only gives party making exceptions 30 minutes of oral argument. Other parties, including the Petitioner, are not enumerated to have time to respond. This might encourage more to file an exception just to get oral argument time.

Where do CEF modifications fit in with timing of exceptions hearing? Does the Hearing Examiner do modifications hearing and also the Board as part of exceptions?

Does the Hearing Examiner define boundaries for village centers?

## **C. Action by Board on Receipt of Report**

Again why does this apply to PDP amendments or village centers if not piecemeal zoning? If it is not piecemeal, then neither Zoning Counsel nor Hearing Examiner can participate..

Rules and County Code do not permit proxy signings by the Board members as was done in several cases.

Attesting by Board Administrator- Does Revised Uniform Law on Notarial Acts (State Government Article § 18-201 *et. seq.*) apply? Then the Administrator who attests would need to be a notary. <https://casetext.com/statute/code-of-maryland/article-state-government/subtitle-2-revised-uniform-law-on-notarial-acts>

Again where do CEF modifications fit into these procedures?

C. is confusing and redundant with F. on page 13.

Remand should be a separate section

## **Page 13**

### **F. Decision and Order**

Report of Hearing Examiner (comma )Exceptions - This should be clarified these are two different documents.

Replies to Exceptions of a Party missing.

Again see C. on page 12.

### **H. Time Period**

90-day metric does not make sense with time from closing of record with possibly many months of additional time for the Hearing Examiner, exceptions, and Board deliberations. Time should run from the time that the Zoning Board votes on the petition.

**I. Distribution of Decision and Order**

Again, is a CEF making changes to the zoning maps? Jeff Bronow sua sponte acknowledged this in email. So again everyone but the Office of Law and Zoning Counsel believe that CEF is an amendment to the zoning maps

**Reconsideration of Decision and Order**

There is not time to schedule and consider a reconsideration even if the Board wanted to. Thirty days is not enough time for motion, response and scheduling by the Board.

Thank you for your consideration of these important issues.

Please contact me for clarifications or questions.

Sincerely,

Joel Hurewitz



TO: Howard County Zoning Board

FROM: Joan Lancos  
6110 Covington Road  
Columbia, MD 21044

RE: Changes to Zoning Board Rules of Procedure

Thank you for the opportunity to comment on changes to the Zoning Board Rules of Procedure. As a former member of the Planning Board and as someone who has attended many Planning Board, Board of Appeals, Hearing Examiner, Zoning Board, and Design Advisory Board meetings, I have witnessed many times how the various processes work.

The **Inclusion of the Hearing Examiner** role in the Rules is necessary due to recent legislation. I have no concerns about the way the changes have been proposed.

I have no problem with the **removal of the requirement to advertise** in two newspapers prior to the hearing. It may not be long before we have NO newspapers in the County.

The proposed rule changes include adjusting the **Order of Presentation** of the case. I disagree with the suggestion to reassign the presentation of the Department of Planning and Zoning until AFTER the Petitioner's case has been presented. Having DPZ go first, sets the stage for the rest of the case and clarifies for everyone the specific purpose of the hearing. DPZ prefates the record, identifies the exact location in the county of the proposed zoning change and introduces the facts that have been presented for review. DPZ also reminds the sitting body of the criteria to be considered and the scope of power of that particular body. I would recommend that since all this information is fact-based, it should not be subject to cross examination.

If the Zoning Board is concerned about DPZ presenting their opinion as to whether the criteria have been met, you could split the DPZ testimony into two parts and not hear the technical piece until after the Petitioner has given their presentation. After the initial presentation by DPZ, the Petitioner could present their case and then DPZ could give its subjective review as to whether staff believed the burden of proof had been met on a technical level once everyone has heard the Petitioner's presentation. It should also be noted that the Technical Staff Report no longer states recommendations for approval or denial. This removes the appearance of DPZ being for or against any particular case. It would also allow for detailed questioning of staff by the Board and others. I have witnessed in depth questioning of staff on issues that are fully presented in the Petitioner's case. Splitting the DPZ presentation would streamline the process.

I would like clarification regarding **Cross Examination**. The current Rules of Procedure clearly state in Section 2.403 D.3.f.3 (page 7) that "Cross examination of protestant's witnesses by the petition and the Board" should take place. Unlike in the case of the Petitioner's presentation, this section does not specifically state that members of the audience have the right to cross examine protestants statements. Cross examination rules should be the same for all parties to a case. In addition, I would like clarification as to who can cross examine a witness and the number of times each person can be cross examined by

the same party. Additionally, can someone ask questions of the Zoning Board regarding their background or understanding of the facts as I witnessed in a recent case?

The opportunity to become a **Party** to the case by sending a letter indicating interest has been removed. I see no benefit to this process and am glad to see it removed. In the same way that you cannot send in testimony without being present, you should not be Party to the case unless you were present at the sign in. As difficult as it is to require that all parties must sign up to testify prior to the close of the Petitioner's case or be called as a witness in rebuttal or surrebuttal, there must be a method available to complete the case without the continuous addition of new parties.

Including the section on **Virtual Proceedings** is important. Although the Zoning Board and the community were able to adapt to a new format in the short term, codifying that format is critical as we move forward. It is my hope that some means can be found by which all hearings can continue to have a virtual component as it allows for more community involvement than in-person only meetings. I do have a couple of tweaks that I would like to suggest:

Section 2.403 E.1.a (page 10). I agree that speakers should arrange for all relevant documents to be transmitted in advance of the testimony so that staff can insure that the documents are in a presentable form. I think it would be helpful if some kind of reasonable time frame for the transmission (perhaps noon on the day of the hearing) be added.

Section 2.402 E.2.3.a (page 10). Ideally, Zoning Board members, the Hearing Examiner, and any speaking participants should be visible on camera. However, there are times when being off camera could be a benefit, such as to improve audio by deleting video feed. I would hate for testimony to terminate because of a poor internet connection or bandwidth issues.

Finally, I would like to address the Zoning Board process from a **community perspective**. It is imperative that the Zoning Board hear and decide each case in an expeditious way. All cases before the Zoning Board impact the community. The community needs to know the results of a zoning case in a timely fashion. Waiting months or years to schedule a case, hear a case, render the decision and sign the Decision and Order benefits no one. Keeping the community in limbo is not fair to the Petitioner, the property owner, adjacent residents, or anyone following the process and may be at odds with County Code requirements. Please work together to find a way to resolve this situation.



## Howard County Citizens Association

*Since 1961...*

*The Voice Of The People of Howard County*

Date: 1 June 2022

Subject: Zoning Board Rules of Procedure Revision

Dear Zoning Board Members,

My name is Stu Kohn and I am the President of the Howard County Citizens Association, HCCA. As you know, we continue to be very concerned that the Zoning Board Rules of Procedure have been needing major improvements for years. Now is the time to listen and take the necessary action to be assured all participants will receive the justice we have been seeking for years. We simply are looking for accountability and Due Process. This body needs to unequivocally zone in on the problem and once and for all remedy the situation. We know some of you want to, but please prove it! This is an opportunity to get it right – now and in the future, no matter how long it takes. The zoning process should be one of your major priorities for all of your constituents. Please fix it!

When HCCA testified on CB77-2021 we stated a lot of apprehension regarding having the Hearing Examiner as the front door. We still do! However, we would like your consideration to take this opportunity to include other topics as stated in the notification, “to modify alter and/or change by either additions and/or deletions to the existing Rules of Procedure.” This being the case there needs to be conversation and action taken in the following areas in an attempt to get it right. This should include the following in no particular order especially when some of these are included in the Rules of Procedure of the Hearing Examiner, Board of Appeals or Planning Board. We need consistency and standardization amongst these entities. However, we recommend that many of the sections be re-evaluated for clarity. There should be an appointed volunteer of interested parties to review and suggest needed revisions.

- Implementation of 202G – see attachment.
- When the Zoning Counsel is to participate.
- Any Motion filed shall be decided immediately without any delays.
- Issuance of Subpoenas when required see – the Board of Appeals Rules of Procedure on page 8, section 2,208(h) and stated in Section 7.5 in the Hearing Examiner's Rules of Procedure.
- Reconsideration Section amended to require a response from the Zoning Board. This is included in the Hearing Examiner's Rules of Procedure under Section 11.6.
- Mandate that zoning terminology should be associated with the definitions as set forth in the American Planning Association dictionary not resort to the standard dictionary.
- Elimination of going to Mediation.

- Sanctions declared when anyone displays disorderly conduct.
- Zoning Board Members not to display their biases by stating in proceedings any negative remarks of any party.

If the above was discussed and adopted in the Rules of Procedure only then will we have the opportunity to perhaps believe the scale of justice might be properly balanced by having a system, we can better depend on.

Now let's discuss the draft to reflect CB77-2021. Please refer to the draft for review.

### Page 1

Legal Advisor – will the County Solicitor be present at the Hearing Examiner phase? If we are not to get gender specific, then need to change “his/her” to “their”.

Zoning Counsel – what is the criteria as to the appearance of the Zoning Counsel in zoning cases. This requires to be completely spelled out in this document as there are areas within this document which infer the Zoning Counsel's appearance is a prevalent body in zoning cases.

### Page 2

Open Hearings – add at the end the following: If a Board-member, Hearing Examiner or Zoning Counsel is found to have had communication regarding the case outside of the hearing then said person(s) shall have to recuse themselves.

### Page 4

a. Amendments – delete the word “or” and add after Hearing Examiner - Zoning Counsel and Protestants.”

b. Substantial Amendments – reading this segment the question is why wasn't it implemented in the Erickson case?

4. b. Resubmission of Petition – Please define the word “substantially.”

### Page 5

C. Notice to the Public 1. Advertising – why the suggested deletion?

2. Posting of Property 5<sup>th</sup> line – refer to: “the close of the hearing(s) to allow time for Board members or Hearing Examiner to visit the site.” Why would it be at the “close of the hearing”?

## Page 6

### D. Conduct of Hearings

1. Docket – suggest you look at the Hearing Examiner Rules of Procedure in 7.5 on page 5 regarding “Preliminary Matters” as this is currently not a part of the Zoning Board Rules of Procedure. Add “2. Preliminary Matters”.
2. Presentation would be number 3. It states, “zoning counsel.” This implies the zoning counsel will be present in all cases. Is this true?
3. Order of Presentation and Burden of Proof the 6<sup>th</sup> line – “he or she” is changed to non-gender. Should be standard throughout this document.
- 11<sup>th</sup> line – after Zoning Board add “Hearing Examiner.”

Before “a.” suggest you add “a. Preliminary Matters” and change “a” to “b” etc.

Refer to “c” – add after last sentence – If it is determined during the case that a head or designee of a given Agency is required for clarification or more information then they shall be asked to testify under oath and be subject to cross-examination. This should also apply to the Planning Board for consistency and fact finding. *Sidenote: CB71-2018 was to correct the problem, Then Council-members Ball and Terrasa voted in Favor. CB32-2019 was to do the same but it too failed with Council-members Walsh and Yungmann voting in Favor. We don't understand the logic of its failure especially if one believes in Due Process.*

## Page 7

- (f) – refer to end of section as it states, “zoning counsel.” Does this mean that the zoning counsel will be present in all cases?
4. Oath – reference “his/her” change to “their”
  6. Matter of Law – after the word “objections” add “shall be immediately ruled on”

## Page 8

7. Legal Memoranda – add after “open sessions” a new sentence – “A copy shall be sent to all parties in the case.”
11. Communication Outside of a Hearing 4<sup>th</sup> line – after the word “case” add a sentence – “Any Board or Hearing Examiner member found guilty by not abiding shall immediately recuse themselves from the case.”
12. Signing Up to Testify -- What is the procedure when in virtual mode?

### Page 10

(a (1)) – change “his/her” to “their”

E. Virtual Proceeding – reference the word “reasonable.” What is the definition of “reasonable”?

F. 8<sup>th</sup> line – refer to “include a statement” When is this implemented?

### Page 11

3<sup>rd</sup> line – change “his or her” to “their”

Refer to “a” -- At the end add “by contacting the Board’s Administrator for instructions.”

2.1.1 Audio/Video – at the end add “Any potential objections by a given party shall be recognized by raising a hand.”

Question -- If a party is calling in by phone how will they be recognized?

2.1.2 Troubleshooting – what is the “messaging system?”

2.3 Staging and Venue – a) what happens if a party does not have a camera or microphone on their computer system? What happens when there is a system failure?

### Page 12

2.2 Attendance (b) – How much time in advance to add an additional attendee not previously invited to a proceeding does the party have to alert the Zoning Board Administrator prior to the start of proceedings?

3.2 Use of Documents (a) – after the last word “witness” add “and opposing party.”

(b) – after the last word “proceedings” add “by contacting the Zoning Board Administrator for instructions.”

### Page 13

A, Report of Hearing Examiner –(2) after the words “support of it” add the words “or “Denial.”

(B) Exceptions -- refer in the first sentence “the Zoning Counsel” once again it looks like the zoning counsel is present in all cases.

7<sup>th</sup> line – change the word “excepts” to “disagrees”

After the next “excepts” change to “disagrees with the Hearing Examiner findings”

12<sup>th</sup> line – after the last word “exception” add “and if necessary, ask for key witness(s) for questioning”

(D) Majority Vote – Should state that any tie vote shall not be accepted.

Page 14

H. Time Period – What is the penalty if the Decision and Order is greater then the required 90 days?

Section 2.405 – Reconsideration of Decision and Order – B. Written Petitions – refer to 2<sup>nd</sup> line – “the petitioner” why served by the petitioner? See the Hearing Examiner’s Rules of Procedure where it states, “the Hearing Examiner will issue a written statement.”

Page 15

C. Response to Reconsideration – refer to “may” change to “shall”

D. Board’s Authority – refer to last sentence – add a sentence which states, “The Board shall in writing to all parties, state why the Reconsideration will be heard or if denied the rationale which either decision shall be sent to all parties.”

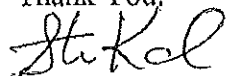
In closing, we only hope this body will take the necessary action to get the zoning process right. We believe that with the incorporation of the aforementioned we would be delighted to think we might have a better process. One can only hope! We are extremely tired as business as usual!

While we are discussing the zoning process how about consider getting rid of the Community Enhancement Floating Zone or CEF. It is too subjective. Have the Petitioner prove Change and Mistake?

Zoning Board Member Walsh, said it best in her dissent statement, “There was no due process, neither rules applicable nor consistently enforced, throughout the interminable hours of hearings – flung in whole, then in part, to a virtual realm. There were no sufficient evidentiary bases for the findings and conclusions here stated – not as a majority originally voted upon, even less so as subsequently modified. I entirely dissent.” This says it all!

Theoretically if all areas of concerns were to be adopted as we suggest then perhaps no Zoning Board Member would have to write such a powerful statement which for the most part is the current par for fairness in Zoning Board cases. Please lets make our zoning process something we can ALL Be VERY PROUD!

Thank You,



Stu Kohn  
HCCA President

## Attachment

### **Charter -- ARTICLE II. - THE LEGISLATIVE BRANCH**

#### **202 The County Council -- (g) Planning and Zoning**

1. Any amendment, restatement or revision to the Howard County General Plan, the Howard County Zoning Regulations or Howard County Zoning Maps, other than a reclassification map amendment established under the "change and mistake" principle set out by the Maryland Court of Appeals, is declared to be a legislative act and may be passed only by the Howard County Council by original bill in accordance with the legislative procedure set forth in Section 209 of the Howard County Charter. Such an act shall be subject to executive veto and may be petitioned to referendum by the people of the county pursuant to Section 211 of the Charter.

#### **Section 209. - Legislative procedure.**

(a) *Enacting clause.* The style of the enacting clause for all laws of the Council shall be: "Be it enacted by the County Council of Howard County, Maryland." All laws shall be passed by original bill.

(b) *Titles.* Each law enacted by the Council shall embrace but one subject and that subject shall be described in its title; and no law or section of law shall be revised or amended by reference to its title or section only.

#### **Section 211. - The referendum.**

(a) *Scope of the referendum.* The people of Howard County reserve to themselves the power known as "The Referendum," by petition to have submitted to the registered voters of the County to approve or reject at the polls, any law or a part of any law of the Council. The referendum petition against any such law shall be sufficient if signed by five per centum of the qualified voters of the County calculated upon the whole number of votes cast in the County for Governor at the last preceding gubernatorial election. Such petition shall be filed with the Board of Supervisors of Elections of Howard County within sixty days after the law is enacted. If such a petition is filed as aforesaid, the law or part thereof to be referred shall not take effect until thirty days after its approval by a majority of the qualified voters of the County voting thereon at the next ensuing election held for members of the House of Representatives of the United States; provided, however, that if more than one-



half but less than the full number of signatures required to complete any referendum petition against such law be filed within sixty days from the date it is enacted, the time for the law to take effect and the time for filing the remainder of signatures to complete the petition shall be extended for an additional thirty days. Any emergency measure shall remain in force from the date it becomes law notwithstanding the filing of such petition, but shall stand repealed thirty days after having been rejected by a majority of the qualified voters voting thereon. No law making any appropriation for current expenses shall be subject to rejection or repeal under this section.

(b) *Form of petition.* A petition may consist of several papers, but each paper shall contain a fair summary of the Act or the part of the Act petitioned upon; and there shall be attached to each such paper an affidavit of the person procuring the signatures thereon that, to the said person's own personal knowledge, each signature thereon is genuine and bona fide, and that to the best of his or her knowledge, information and belief the signers are registered voters of the State of Maryland and Howard County, as set opposite their names. The Board of Supervisors of Elections shall verify the registration of said petitioners.



Members of the Zoning Board,

I am testifying on behalf of the Progressive Democrats of Howard County to urge substantive changes to the rules of procedure to address the deep flaws that currently exist in how the Board conducts the people's business.

Last year, I participated in an extensive public hearing process for the Erickson Development project, where the Zoning Board chairs took extreme liberties and discretion with the rules. The unfortunate result was to rob the public of whatever semblance of due process it was afforded by the current rules of procedure.

First the Zoning Board refused to rule on motions timely. You may remember certain key motions that, had the zoning board ruled, would have had a material impact on the trajectory of the hearing. This improper handling of motions was inexplicable, outrageous, and contributed to distrust of the public process.

Let's consider a criminal case. In the case of the defendant, a judge cannot rule on a motion to exclude or include material evidence until the end of a trial or it would rob the defendant of due process thereby violating the defendant's 14<sup>th</sup> amendment protections.

The same concept can and should be applied to the Board's rules of procedure. The question one should ask is, do the rules provide a member of the public who engages in this public process assurance that the Zoning Board is conducting a hearing in a fair and impartial way. Is politics or political pressure weighing down on the decisions of the members of the zoning board?

Based on how the Erickson case was conducted the answer is "no, the process is not impartial and yes, politics and political pressures play a role." To help reduce incidences of inappropriate decisions, the rules should indicate clearly that motions should be decided timely. Meaning, after they are heard and before the next step of the public hearing.

Another part of the hearing that is susceptible to abuse, politics, and political pressure is the issue of subpoena power. Members of the Zoning Board tasked with fact-finding and members of the public who wanted to speak with county officials and staffers were not afforded the opportunity to question witnesses. After the zoning board voted unanimously to call additional witnesses, the county executive brazenly refused to cooperate and prevented witnesses from appearing. This is of course obstruction of justice and the county executive does not have any right to dictate the fact-finding process.

To make it clear and unequivocal, the board should delineate in the rules of procedure a process by which witnesses are compelled to appear. It can be argued that since the county council has subpoena power and since the Zoning Board draws its powers from the county council, the Zoning Board's subpoena power is implied. If this analysis is incorrect, then other means should be provided. I urge members of this Board who have investigated this issue to advise the public what avenues are available to ensure witnesses appear for questioning.

Another suggestion was that the county council could pass a resolution during the regular session and exercise its subpoena power to assist the Zoning Board. Any concerns about ex-parte rules were thrown out the window when council members argued that they can take up cases that affect a Zoning Board matter last year.

The rules of procedure should be amended to eliminate the role of the Department of Planning and Zoning, specifically, the Director in the proceedings. The Director is not involved in the conduct of the review of the petition and cannot respond to specific questions knowledgeably. In fact, there were several instances during questioning when the Director indicated that she could not speak to an issue. This is not surprising since

the only individual who can do so is the county staff member who reviewed the petition.

Accordingly, the role of the DPZ director in the presentations should be eliminated. In other words, we are advocating for the amendment of Section D.3.c from the rules of procedure to indicate that the role of the DPZ here is to answer questions only. A presentation by the Director or designee is superfluous and could be viewed as an added infomercial of the project, which is inappropriate in an adversarial proceeding.

Lastly, we urge the Zoning Board to strongly consider hiring its own counsel that does not rely on the assistance of the Office of Law. While this may not be handled by amending the rules of procedure, it is worth pointing out that the Office of Law cannot successfully advise two separate branches of government. Either bifurcate the office into two or hire a separate council.

We cannot underestimate the role of the Zoning Board in fostering or harming public trust. Clear rules can reduce political pressure and contribute to a level playing field that is severely lacking. We urge you to consider our proposals and implement them as part of the pending changes.

Hiruy Hadgu

PDHC