



Howard County Board of Appeals

George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043-4392

MINUTES March 6, 2025 WORK SESSION Hybrid Hearing (CVG Room and Webex)

Board Members Present:

Gene Ryan, Chair
Lynn Foehrkolb, Vice Chair
Robbyn Harris
Felita Phillips (arrived late)
Jean Xu

Staff:

Kel Berg
Michelle Harrod
Barry Sanders
Nick Rinehart
Amanda Mihill
Elizabeth Adams
Kiasten Miller

Call to order at: 9:16 a.m.

Administrative Matters

Approval of Minutes – January 30, 2025

Motion – Robbyn Harris, 2nd Lynn Foehrkolb

Unanimously approved (4-0, Ms. Phillips not yet present). The motion passed.

Meeting Overview

The Board of Appeals is convening to discuss the Board of Appeals administrative practices, procedures, and policies consistent with the Howard County Charter, Article V.

Review of Proposed Rule Changes

Ms. Harris would like the rule on virtual hearing attendance to be left as it is in the current rules. Chair Ryan stated that the rules can be revised until May 15, 2025, at which time the Board will agree on one final document.

Legal Sufficiency

Chair Ryan stated that the draft ROP was sent to Office of Law for legal sufficiency review and that feedback was received.

Mr. Kuc stated that the Office of Law does not have a preference on the format of how legal sufficiency is provided. He stated that Office of Law identified items that were legally sufficient problems, as well as some technical issues that were flagged for the Board to consider.

Mr. Kuc stated that when the Board presents its ROP to the County Council, any conflicts with the County Code could either be 1) flagged as requiring a Code amendment or 2) leave conflicts out of proposed rules, make a separate list, and request the County Council to amend the Code provisions and make the additional rules part of the ROP after the Code is changed.

Chair Ryan stated that there are existing inconsistencies in the rules and that he wanted to fix everything all at once. Mr. Kuc stated that Office of Law will take the comments in the draft and if there are conflict issues, they will flag and identify the Code section that needs to be amended.

Chair Ryan stated that he wanted to divide current Code sections amongst the Board, compare it with the existing draft, and then return to Office of Law for review.

Ms. Foehrkolb stated as an example of inconsistencies regards the employee manual and whether Board members are employees or not. Ms. Foehrkolb stated that she is not considered an employee of the County, but yet she receives a W-2 form. Mr. Kuc replied that the context of "employee" could have different purposes and meanings. He stated that an employee is defined by the County Code and in the employee manual. Ms. Harrod stated that for payroll purposes, the Board members are employees of the County.

Mr. Kuc stated that Office of Law does not get involved in policy judgements. Chair Ryan asked if the County Council would be asking Office of Law for a legal sufficiency review on the ROPs and Mr. Kuc replied that at some point a bill does get a legal sufficiency review.

Ms. Harrod stated that when the Board approves the ROP, a bill will be submitted to Office of Law for legal sufficiency review and presented to the County Council. She stated that confidential documents are not shared with the Board.

Chair Ryan asked if a discussion where the Office of Law would provide the Board legal advice on the legal sufficiency of the ROP could be in a closed or open session and Mr. Kuc replied that it would be up to the Board. Mr. Kuc clarified that the draft Rule regarding the employee manual was not legally insufficient and Ms. Xu wanted to know who created the line item regarding the employee manual in the rule changes. She asked why the Board would want to be subject to the employee manual.

Mr. Reinhart clarified that the spreadsheet guide he created cross-referenced the comments from Office of Law from the December 19, 2024 ROP draft and the comments from the January 17, 2025 ROP draft that was presented at the Public Hearing on January 30, 2025. He stated that his document had updated the sections, pages and line numbers. Chair Ryan stated that the formatting of the ROP changed between the 2 drafts but that the content did not.

Chair Ryan stated this initiative must be completed by May 15, 2025 so that the County Council can take action. He stated that the next step is for the Board to review proposed rules against existing codes and regulations. He compiled a list of relevant legislation and wants each Board member to review specific sections and identify any conflicts or incompatibilities. He stated that findings will be entered into a shared excel spreadsheet, updated in real time and in the same format. He stated that when complete, the Board will meet in a Work Session to discuss the findings. He stated that the document will be for internal use. Ms. Harris asked if the Board was being duplicative.

Mr. Kuc stated that legal advice is for the Board and not for the public, but that discussion based on the advice is allowed in an open meeting.

Chair Ryan recommended incorporating relevant sections of the Hearing Examiner rules and making one set of rules, to remove inconsistencies. Ms. Xu suggested creating a separate document with suggestions for changing the Hearing Examiner rules. Mr. Kuc stated that the County code requires the Hearing Examiner to have its own set of rules and that the Hearing Examiner exists as a separate decision maker.

Ms. Xu stated that at this point the Board should go through the line items and single out the ones that need further research. Chair Ryan stated that he did not think all inconsistencies had been reviewed. Ms. Xu stated that the Board should work with the current information instead of doing broad research. She stated that she was concerned about the time limit. Ms. Foehrkolb stated that the process will increase her familiarity but that it will take her a while to digest the information. Ms. Harris stated that she was okay with doing it but wanted everything to be done appropriately. She stated that she had concerns with only doing one section.

Next Steps

The Board will discuss how to move forward with the changes to the Rules of Procedure as a preliminary matter at the next hearing date of March 13, 2025.

Motion and Vote

Mr. Ryan moved that this meeting be closed in accordance with Section 3-305(b)(8) of the General Provisions Article of the Annotated Code of Maryland, to consult with staff, consultants, or other individuals about pending or potential litigation. The topic is case C-13-CV-25-000106 Lubna Khan vs. Howard County Board of Appeals, et al. The motion was seconded by Ms. Foehrkolb.

The roll call vote called by the Administrator on the motion was: Yea: Board Members Foehrkolb, Harris, Phillips, Ryan and Xu.

The motion passed.

The Board of Appeals adjourned the open meeting at 11:18 a.m. and met in closed session at 11:27 a.m.

Statement of Closed Meeting

As required by Section 3-306(c)(2) of the *General Provisions* Article of the Annotated Code of Maryland, the following is a report of the Board of Appeal's closed session of March 6, 2025. The Board of Appeals met in closed session at 11:27 a.m. on March 6, 2025 in the C. Vernon Gray Room of the George Howard Building, pursuant to Section 3-305(b)(8) of the *General Provisions* Article of the Annotated Code of Maryland, to consult with staff, consultants, or other individuals about pending or potential litigation. The topic was case C-13-CV-25-000106 Lubna Khan vs. Howard County Board of Appeals, et al.

The topics actually discussed were the general findings of facts regarding pending litigation for case C-13-CV-25-000106 Lubna Khan vs. Howard County Board of Appeals, et al.

No action was taken by the Board of Appeals members.

The following persons were present at the closed session:

Board Members Present: Gene Ryan, Chairperson; Lynn Foehrkolb, Vice Chairperson; Robbyn Harris; Felita Phillips, and Jean Xu.

Staff Present: Kel Berg, Board Administrator; Gary Kuc, County Solicitor; Barry Sanders, Board Counsel and Elizabeth Adams, Senior Assistant County Solicitor.

The closed session ended at 12:12 p.m.

MINUTES APPROVED

Kel Beng 3/13/2025

