

In support of these motions, Hurewitz states as follows:

I. THE HOWARD COUNTY COUNCIL HAS NOT MADE APPOINTMENTS OF THE HEARING EXAMINER OR ZONING COUNSEL BY COUNCIL RESOLUTION

The Protestant, Joel B. Hurewitz is a resident, registered voter, and taxpayer of Howard County, Maryland.

On information and belief, Joyce Nichols has never been lawfully appointed to the position of Board of Appeals Hearing Examiner or Zoning Board Hearing Examiner pursuant to a County Council resolution as required by the Howard County Charter including, but not limited to, Sections 204, 206, 209, 216, and 405.

On information and belief, Nathaniel Forman has not been lawfully appointed to the position of Zoning Counsel pursuant to a County Council resolution as required by the Howard County Charter including, but not limited to, Sections 204, 206, 209, 216, and 405 and additionally did not receive three votes of the County Council as provided in Howard County Code Section 16.1000.

The Howard County County Council Administrator, Michelle R. Harrod responded to a Public Information Act request for

documents showing when the Board of Appeals Hearing Examiner, the Zoning Board Hearing Examiner, and the Zoning Counsel were appointed by County Council resolution as provided by Sections 209, 216, and 405 of the Howard County Charter.

stating that “The Howard County Council has no documents responsive to your request.”

Public Information Act Response Letter from Michelle R. Harrod, Council Administrator, to Joel Hurewitz, January 20, 2026. In other words, there are no Council resolutions regarding the appointments of the Board of Appeals Hearing Examiner, the Zoning Board Hearing Examiner, and the Zoning Counsel .



Howard County Council

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

COUNCILMEMBERS

Opel Jones, Chair
District 2
Christiana Rigby, Vice Chair
District 3
Liz Walsh
District 1
Deb Jung
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David Yungmann
District 5

January 20, 2026

Dear Mr. Hurewitz,

The following is in response to your email to Howard County Council, requesting information in accordance with the Maryland Public Information Act, 4-101 *et seq.* of the General Provisions Article of the Annotated Code of Maryland (the "PIA"), which this office received on January 14, 2026.

Specifically, you have asked for:

"Pursuant to the Maryland Public Information Act, please provide documents showing when the Board of Appeals Hearing Examiner, the Zoning Board Hearing Examiner, and the Zoning Counsel were appointed by County Council resolution as provided by Sections 209, 216, and 405 of the Howard County Charter"

The Howard County Council has no documents responsive to your request.

Pursuant to MPIA § 4-362, you are entitled to seek judicial review if you are denied inspection of a public record or are not provided with a copy, printout, or photograph of a public record as requested. Under MPIA Section 4-1B-01 *et seq.*, you may request dispute resolution from the Public Access Ombudsman for disputes related to requests for public records. Under MPIA Section 4-1A-01 *et seq.*, you may also file a complaint with the State PIA Compliance Board if you believe you have been unlawfully denied inspection of a public record, were charged an unreasonable fee in excess of \$350, or if your request was responded to in an untimely manner if you have first attempted to resolve a dispute through the Ombudsman and the Ombudsman issues a final determination that the dispute was not resolved.

For more information on the PIA, please visit Maryland's Office of the Attorney General website at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/pia.aspx>

Sincerely,

A handwritten signature in blue ink that reads "Michelle R. Harrod".

Michelle R. Harrod
Council Administrator

II. THE ZONING AUTHORITY IS THE HOWARD COUNTY COUNCIL SITTING AS THE HOWARD COUNTY ZONING BOARD

The Zoning Enabling Act of Howard County (Title 16, Subtitle 2) states that the zoning authority for piecemeal zoning map amendments is the Howard County Council sitting as the Howard County Zoning Board:

(a) *Zoning Authority*. This subtitle provides that the Zoning Authority of Howard County for comprehensive zoning and for amendments to the text of the Howard County regulations shall be the County Council of Howard County and the Zoning Authority of **Howard County for piecemeal zoning map amendments and decisions on development plans shall be the Howard County Zoning Board**. The Howard County Council, acting as a legislative body, reserves unto itself the authority to grant variances from the strict application of the zoning regulations with regard to governmental uses of land. This authority shall be exercised by passage of a resolution after a public hearing and a finding that the action is in the public interest.

Howard County Code (“Code”), Section 16.200(a) (emphasis added). Additionally, the Code states

(a) *Piecemeal Map Amendments and Development Plan Approvals*. It is the intention of the County Council of Howard County, in the enactment of this subtitle, to establish a **legislative agency of the County Council which shall be the Zoning Authority of Howard County for piecemeal map amendments and for decisions on development plans. The Zoning Authority so created shall be known as the Howard County Zoning Board and shall consist of the members of the County Council**. The Chairperson of the County Council may be the Chairperson of the Zoning Board; the vice Chairperson of the County Council may be the Vice Chairperson of the Zoning Board. The County Council may, at its discretion, designate other members of the County Council to be the Chairperson of the Zoning Board and vice Chairperson of the Zoning Board. This shall be accomplished annually in December. An administrative assistant to the Zoning Board shall be appointed by the Board.¹

Code Section 16.201(a) (emphasis added).

Last year, the Appellate Court of Maryland confirmed that

the Howard County Zoning Board, "consist[s] of the members of the County Council." Howard County Code of Ordinances § 16.201(a). In other words, the County Council in Howard County, a five-member elected body, "added to its legislative hat another piece

¹ There is also no evidence that the administrative assistant was ever actually appointed by the Zoning Board with a vote at a public meeting.

of headgear when it made for itself a zoning board hat" by legislative act in 1969. *Turf Valley Assocs. v. Zoning Bd. of Howard Cnty.*, 262 Md. 632, 643, 278 A.2d 574 (1971).

In the Matter of HRVC Ltd. P'ship., 338 A.3d 861, 868, 266 Md. App. 391 (2025).

As discussed herein, the County Council is obligated under the County Charter to appoint the Zoning Board Hearing Examiner and Zoning Counsel. The Council held no public meeting (possibly in violation of the Open Meetings Act) in approving Nichols' contracts as Board of Appeals Hearing Examiner and the extensions thereto. At the January 20, 2026 Legislative Public Hearing, Zoning Board Chair and Councilmember David Yungmann spoke about the benefits of having resumes for appointees publicly posted because of the 30 or so members of the public that might take the time to share relevant information with the Council. The same benefit will exist if the public were to have an opportunity to give testimony regarding the nominees for Board of Appeals Hearing Examiner, Zoning Board Hearing Examiner, and Zoning Counsel.

Former Board of Appeals Hearing Examiner Katherine Taylor claims that she does not understand why the Council, without public explanation, chose not to extend her contract in a closed meeting. The *Baltimore Banner* reported in an article entitled "*Ex-Howard County hearing examiner questions decision to remove her in closed session*," Taylor said in her letter to the Council that her "contracts previously were renewed in open session." Jess Nocera, *Baltimore Banner*, Oct. 16, 2025. Taylor was not correct; there was never a public resolution process giving the public the ability to comment or testify. As with Taylor, regarding Nichols' appointment, Council Administrator Michelle Harrod stated:

There are no resolutions or minutes for the approval of the contract. Ms. Rigby, Ms. Jung and Mr. Yungmann provided an affirmative approval for the fiscal year 2022 Hearing Examiner contract. Ms. Walsh was a verbal no and Dr. Jones did not respond.

Public Information Act Letter from Council Administrator Michelle R. Harrod to Joel Hurewitz, Feb. 28, 2022.



Howard County Council

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3430 Court House Drive
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COUNCILMEMBERS

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Deb Jung
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February 28, 2022

Dear Mr. Hurewitz:

The following is in response to your email to Howard County Council Office, requesting information in accordance with the Maryland Public Information Act, 4-101 *et seq.* of the General Provisions Article of the Annotated Code of Maryland (the "PIA"), which this office received on February 24, 2022.

Specifically, you have asked for... "*... a copy of any contract for Hearing Examiner Joyce Nichols and any associated resolution and/or minutes of the County Council regarding its approval.*"

Attached to this is a copy of the Hearing Examiner contract along with the 1st and 2nd amendments for Joyce Nichols. There are no resolutions or minutes for the approval of the contract. Ms. Rigby, Ms. Jung and Mr. Yungmann provided an affirmative approval for the fiscal year 2022 Hearing Examiner contract. Ms. Walsh was a verbal no and Dr. Jones did not respond.

We are still researching our records for approval of prior year contracts and will respond to you as soon as we have that information available.

Pursuant to MPIA § 4-362, you are entitled to seek judicial review of this decision by filing a complaint in the Circuit Court for Howard County or the Circuit Court in Maryland in the County where you reside or maintain a principal place of business. You may also refer any concerns about this decision to the Public Access Ombudsman pursuant to MPIA § 4-1B-01 *et seq.*

For more information on the PIA, please visit Maryland's Office of the Attorney General website at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/pia.aspx>

Sincerely,

Michelle R. Harrod
Council Administrator



**SECOND AMENDMENT TO AGREEMENT FOR HEARING EXAMINER SERVICES
FOR THE HOWARD COUNTY COUNCIL**

THIS SECOND AMENDMENT TO AGREEMENT FOR HEARING EXAMINER SERVICES FOR THE HOWARD COUNTY COUNCIL is made as of this _____ day of June, 2021, between the HOWARD COUNTY COUNCIL ("County Council") and Joyce B. Nichols, Attorney at Law ("Hearing Examiner").

WHEREAS, the County Council and Hearing Examiner entered into a contract dated December 31, 2019 for Hearing Examiner to provide services as a hearing examiner (the "Agreement").

WHEREAS, Section 12 of the Agreement provides that "[s]ubject to appropriation of funds for FY2022 and successive fiscal years, at the option of the County Council, the contract may be extended for additional terms of 12 months commencing on July 1 of a fiscal year and expiring on June 30 of the fiscal year. Such extension shall be by amendment to this agreement."

WHEREAS, the County Council desires to extend the Agreement on the same terms and conditions for an additional term of 12 months commencing July 1, 2021 and expiring June 30, 2022.

WHEREAS, the Hearing Examiner desires an extension of the Agreement on the same terms and conditions for an additional term of 12 months commencing on July 1, 2021 and expiring June 30, 2022.

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. Incorporation of Recitals. The above stated recitals are incorporated into the Agreement.
2. Section 12 of the Agreement is amended to extend the expiration of the Agreement to June 30, 2022 with all other terms of Section 12 remaining unchanged.
3. All other terms and conditions of the Agreement remain unchanged and in full force and effect.

This informal action by the Council in 2022 and for any previous and subsequent approvals of the contracts for the Board of Appeals Hearing Examiner, Zoning Board Hearing Examiner, and/or Zoning Counsel were made in violation of Charter Section 204 - Action by Council:

In all of its functions and deliberations, the Council shall act as a body and shall have no power to create standing committees or to delegate any of its functions and duties to a smaller number of its members than the whole.

Therefore, pursuant to Code Section 16.203A(a)(4), “the Zoning Board should hear and decide [the] case” because “(i) The Hearing Examiner position is vacant;” and/or “(ii) The Zoning Board [should determine] that the Hearing Examiner is unable to hear the case because of ... other disqualification;”

III. THE HOWARD COUNTY CHARTER

A

The Howard County Office of Law explained in 2025, how to interpret the Howard County Charter:

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

Memorandum “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, April 10, 2025, Accessible at CB57-2025 [Board of Appeals Information Package](#)

Furthermore, in a case involving the Howard County Board of Appeals, the Supreme Court found that provisions of the Howard County Charter must be followed:

A charter or an ordinance generally is read and construed in the same manner as a statute.... Thus, the cardinal rule of construction is to ascertain and effectuate the actual intent of those who either framed and adopted the charter or enacted the ordinance. ... In determining this intent a court must read the language of the charter or ordinance in context and in relation to all of its provisions and additionally must consider its purpose. ... Where the language of a charter or ordinance is unambiguous, ordinarily there is no need to look elsewhere to ascertain intent. Instead, the language should be given effect in accordance with the clear meaning of the words. ...

Howard Research and Development Corp. v. The Concerned Citizens for the Columbia Concept, 297 Md. 357, 364, 466 A.2d 31 (1983) (internal citations omitted). The legislative intent shows that the Howard County Charter requires the Zoning Board Hearing Examiner and Zoning Counsel to be appointed by the County Council by resolution. To come to any other conclusion is to disregard the prior advice of the Howard County Office of Law.

B

An analysis of legal advice, assistance, and personnel begins with the broad power granted to the County Solicitor in Charter Section 405:

(b) *Powers and duties.* The County Solicitor shall be the legal advisor of the County and of its several offices, departments, boards, commissions and other agencies. **Except as otherwise provided in this Charter, no office, department, board, commission, agency or branch of the County government which receives County funds shall have any authority or power to employ or retain any legal counsel other than the County Solicitor. The County Solicitor shall also be the legal advisor and legislative drafter for the Council, unless the Council shall specify otherwise by resolution. . . .**

Charter Section 405 (emphasis added). The limitations in Charter Section 405(b) are buttressed by Charter Section 206 - Limitation on exercise of Council's powers:

In the exercise of all its powers, the Council shall be subject to the express limitations imposed by this Charter and by all applicable provisions of the Constitution and laws of this State.

The County Council wearing its hat as Zoning Board has no authority to employ legal advisors, including the Zoning Board Hearing Examiner and Zoning Counsel unless authorized by the Charter. The first authority or power of the Council, as quoted above from Charter Section 405(b), is the ability by resolution to have its own "legal advisor and legislative drafter for the Council." The second, applicable here is Charter Section 216 - Special assistance:

The Council may at its discretion, and subject to the provisions in its budget or supplementary appropriation, **by resolution employ such legal, financial or other technical advisors as it may from time to time deem necessary for the performance of any of its functions.**

Charter Section 216 (emphasis added).

Pursuant to Charter Section 405, another exception in the Charter is made for the County Executive, who in comparison to the County Council, is a body of one:

(d) *Other legal assistance.* Nothing in this Charter shall be construed as preventing the Executive from engaging the services for a temporary period of any attorney or attorneys for legal work of an extraordinary nature when the work to be done is of such character or magnitude as to require legal services in addition to those provided by the Office of Law.

Charter Section 405(d).

There also is the recently added exception for the Office of Inspector General which parrots Section 216:

(d) The Office of the Inspector General may at its discretion, and subject to the provisions in its budget or supplementary appropriation, **employ such legal, financial or other technical advisors as it may from time to time deem necessary for the performance of any of its functions.**

Charter Section 915(d) (emphasis added). The voters, in approving the Inspector General Charter amendment are presumed to have understood the exception in 915(d). See *Harford* infra.

The Zoning Board Hearing Examiner in contrast to that of the Board of Appeals Hearing Examiner, is in the nature of an administrative law judge or special master. The Hearing Examiner is only to issue a report, not a final decision. The County Code states

(2) The report shall include findings of fact, summaries of arguments and respective positions in the case or theory in support of it, and conclusions of law.

(3) The report is not an order or final action of the Zoning Board.

Code Section 16.203A (b). The Council's website states

The role of the Hearing Examiner is to conduct evidentiary hearings and issue a report to the Zoning Board on matters under the jurisdiction of the Zoning Board, unless the Zoning Board elects to first hear the application.

<https://cc.howardcountymd.gov/zoning-land-use/zoning-board> The Council, sitting as the Zoning Board, is to make the final decisions. This is exactly what is contemplated by Charter

Section 216 when it allows the Council to employ a legal advisor, to wit, the Zoning Board Hearing Examiner, as it deems necessary for the performance of its zoning functions.

C

Though Nichols has been acting as the Board of Appeals Hearing Examiner, the positions of Board of Appeals Hearing Examiner and Zoning Board Hearing Examiner are not actually the same. The authority for even the existence of the position of Zoning Board Hearing Examiner is Charter Section 216 as implemented by Code Section 16.203A. Charter Section 502 by its terms is limited to the Board of Appeals. Charter Section 502. - Board of Appeals hearing examiner. States in part:

The County Council may **appoint** hearing examiners to conduct hearings and make decisions concerning matters within the jurisdiction of the Board of Appeals.

So technically, Nichols must be separately appointed as Hearing Examiner to the Zoning Board.

Yet, what does it mean to “appoint”? The Appellate Court discussed this stating:

[W]e often look to dictionary definitions as a starting point, to identify the ‘ordinary and popular meaning’ of the terms[.]” *Westminster Mgmt., LLC v. Smith*, 486 Md. 616, 644, 312 A.3d 741 (2024) (quoting *Comptroller v. FC-GEN Operations Invs. LLC*, 482 Md. 343, 390, 287 A.3d 271 (2022)). Merriam-Webster defines the word “appoint” to mean “to name officially[.]” *Appoint*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/appoint> (last visited Jan. 15, 2025); see also *Appoint*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/appoint> (last visited Jan. 17, 2025) (“[T]o choose someone officially for a job or responsibility[.]”); *Appoint*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“To choose or designate (someone) for a position or job, esp. in government.”). We conclude that the term “appointment” refers to a person officially named by the County Executive for a particular position.”

Cnty. Cncl. Wicomico Cnty. v. Giordano,, 332 A.3d 678, 687, 264 Md. App. 685 (App. Ct. 2025).

Charter Section 501(a) . - The County Board of Appeals illustrates that words containing the root “appoint” are used eight times:

Appointment; term; compensation. 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**.

Charter Section 501(a) (emphasis added). The “appointments” to the Board of Appeals, as noted by the recent controversies surrounding the Board Members, are all made by Council resolution pursuant to Charter Section 209. It is inconceivable that the voters in approving adding Charter Section 502 to the Charter as part of the Board of Appeals process would have had Board of Appeals Hearing Examiners only approved by informal assent to a contract and not by formal County Council resolution as provided for the Board members in Charter Section 501(a). See *Howard supra*. **Thus, to officially appoint the Zoning Board Hearing Examiner and Zoning Counsel must be by Council resolution.**

Furthermore, Code Section 16.306 - - Termination of service provides

(a) An examiner may be removed from office by vote of two-thirds of the members of the County Council. The Board of Appeals may recommend removal of an examiner for cause.

To provide that the Board of Appeals Hearing Examiner may be removed by a two-thirds vote after never having been formally appointed flies in the face of the scheme repeated throughout the Howard County Charter.

D

Under Charter Section 404, most appointments to boards and commissions are made by the County Executive with a resolution of confirmation by the County Council:

(a) Citizen boards appropriate to the functions of the Executive and the Legislative branches of government shall be established by law, and the members shall be appointed by the County Executive with confirmation by the County Council.

Charter Section 404. In contrast, where the County Council is the appointing authority, then the appointment and confirmation are one and the same and are made officially by Council resolution. Persons appointed to county boards and commissions under Charter Section 209 may be removed by the appointing authority, which is usually the County Executive “with the approval of a majority of the entire County Council.”

A member of any Board or Commission may be removed from office for cause by the appointing authority with the approval of a majority of the entire Council, but such member shall first be presented with a written statement of the reasons therefor, and shall have the privilege of a public hearing if he or she so requests within ten days.

Charter Section 903. - Removal of members of Boards and Commissions. Therefore, these persons are confirmed by resolution of the Council and removed by resolution of the Council.

Furthermore, at other times the Council has shown that it is capable of following the Charter and making appointments by resolution. Charter Section 212. - County Auditor provides in part:

The Council shall, **by resolution**, appoint a County Auditor who shall hold office for an indefinite term at the pleasure of the Council and shall receive such compensation as the Council may determine.

Charter Section 212 (emphasis added). In February 2025, with Council Resolution 47-2025, the County Council passed a resolution appointing Christopher Ashman as County Auditor. The appointment of an Auditor is a mandatory advisor to the Council; those made pursuant to Charter Section 216 are discretionary. Under the interpretation of the Charter provided by the Office of Law, following the resolution requirement in Charter Section 212 but not in Charter Section 216

is without legal foundation. In other words, that requires “divin[ing] a legislative intention contrary to the plain language of the charter provision or ... insert[ing] language to impose exceptions, limitations[,] or restrictions not evident in the plain language.” See Office of Law Memo. supra.

IV. IT IS APPROPRIATE TO CHALLENGE THAT THE ZONING BOARD HEARING EXAMINER AND ZONING COUNSEL HAVE NOT BEEN LAWFULLY APPOINTED

The Maryland Supreme Court would find that challenging the authority of the appointment of the Zoning Board Hearing Examiner and Zoning Counsel at the outset of the proceedings in this zoning case at hand is the appropriate forum for bringing a motion to disqualify unlawfully appointed persons:

[W]hen the authority of the public official is raised before the official acts . . . the Supreme Court has reached a different conclusion [regarding the de facto officer doctrine]. *Ryder v. United States*, 515 U.S. 177, 115 S.Ct. 2031, 132 L.Ed.2d 136 (1995). Thus, in *Ryder*, where the defendant challenged, while his case was pending, the assignment of two civilian judges to his three-judge Coast Guard Court Military Review panel, the Court rejected the application of the de facto officer doctrine and entertained the challenge. . . . the Court determined that the doctrine was inapplicable because the defendant promptly objected to the composition of the Coast Guard Court of Military Review. *Id.* at 182, 115 S.Ct. at 2035, 132 L.Ed.2d at 143. Unlike the defendants in *Ball*, *McDowell* and *Ward*, the Court explained, *Ryder* directly challenged the composition of the three judge panel while his case was pending before that very court. *Id.* The Court then agreed with *Ryder* that the composition of the three-judge panel violated the Appointment Clause of Article II of the United States Constitution. *Id.* at 187-88, 115 S.Ct. at 2038, 132 L.Ed.2d at 146-47.

Baker v. State, 377 Md. 567, 833 A.2d 1070, 1077 (2003).

The United States Supreme Court, as did the *Baker* Court cited *Ryder*:

This Court has held that "one who makes a timely challenge to the constitutional validity of the appointment of an officer who adjudicates his case" is entitled to relief. *Ryder v. United States*, 515 U.S. 177, 182-183, 115 S.Ct. 2031, 132 L.Ed.2d 136 (1995).

Lucia v. SEC, 138 S.Ct. 2044, 2055, 585 U.S. 237 (2018). Here the Court found that Administrative Law Judges (“ALJs”) of the Securities and Exchange Commission were “officers of the United States” subject to the United States Constitution’s Appointments Clause. The ALJs were treated by the SEC as employees and did not receive Senate confirmation. The ALJs, like the Zoning Board Hearing Examiner, conduct adversarial hearings, administer oaths, rule on motions, regulate the hearing, and rule on admissibility of evidence. *Lucia*, at 2053. The Court stated that the ALJs were “officers, [of the United States] even when their decisions were not final.”*Lucia*, at 2052. Similarly, the Hearing Examiners are officers exercising some part of the sovereign power of Howard County and the State of Maryland and whose decisions as provided in the County Code are not final.

Further analogous support comes from the proceedings in multiple jurisdictions regarding the Trump Administration's maneuvers to install persons as Acting United States Attorneys bypassing the Presidential Appointment and Senate Confirmation process through the Constitution's Appointments Clause. *In Re Grand Jury Subpoenas to the Office of the New York State Attorney General*, 25 Misc. 19 (LGS), Case1:25-mc-00019-LGS, Document 50, Filed 01/08/26, p 6-7. These cases generally involved similar maneuvers by the United States Attorney General and the United States Department of Justice to manipulate the Federal Vacancies Reform Act to install the President’s loyalists as United States Attorneys. District Court Judge Schofield stated

A growing body of persuasive authority reinforces this conclusion. Since August 2025, courts in New Jersey, Nevada and California have held that similarly installed Acting U.S. Attorneys lacked lawful authority. Most recently, in November 2025, the Third Circuit affirmed the New Jersey decision. The Eastern District of Virginia also reached a comparable result in a slightly different procedural posture. The analysis below follows the approach taken by these courts and reaches the same conclusion. When the Executive branch of government skirts restraints put in place by Congress and then uses that power

to subject political adversaries to criminal investigations, it acts without lawful authority. Subpoenas issued under that authority are invalid. The subpoenas are quashed, and [Acting United States Attorney] Mr. Sarcone is disqualified from further participation in the underlying investigations.

Id. at 2. See also *United States v. Giraud*, Case: 25-2635 Document: 81, Filed: 12/01/2025 (Disqualification of Alina Habba as United States Attorney for the District of New Jersey).

Here, at issue in Howard County, the Zoning Board Hearing Examiner and Zoning Counsel were hired and not appointed pursuant to the Charter. In *Lucia*, the ALJs were hired in violation of the Appointments Clause. The Howard County equivalent for the Appointments Clause is Charter Section 216. Through a series of maneuvers, backroom actions, and secret approvals the County Council has sought to avoid the application of Charter Section 216 and with it the role of the public to give testimony and input through the regular appointment and resolution process of Charter Section 209. Judge Schofield stated that there are consequences when the government fails to follow the Constitution or Howard County's equivalent—the County Charter:

[C]ourts often set aside actions taken under unlawful appointments and require new proceedings before properly appointed officials. See *Lucia v. SEC*, 585 U.S. 237, 251-52 (2018); *Ryder v. United States*, 515 U.S. 177, 187-88 (1995); *Flinton v. Comm'r of Soc. Sec.*, 143 F.4th 90, 99 (2d Cir. 2025).

Id. at. 23-24.

V. THE ZONING COUNSEL WAS NOT APPOINTED BY THREE VOTES OF THE HOWARD COUNTY COUNCIL

In addition to the issues of the Howard County Charter, the Zoning Counsel's appointment has failed under the Howard County Code. Section 16.1000 - Zoning Counsel states in part:

(a) The County Council may employ a Zoning Counsel on a part-time, contractual basis. The Zoning Counsel shall be a member in good standing of the Bar of the Maryland Court of Appeals and at the time of appointment shall have been actively engaged in the general practice of law for at least five years.

(b) A decision to enter into a contract with an individual to perform the duties of Zoning Counsel **shall be made by an affirmative vote of at least three Councilmembers**. A decision to terminate a Zoning Counsel's contract shall be made by an affirmative vote of at least four Councilmembers.

Code Section 16.1000 (emphasis added). Code Section 16.1000(b) requires that the Council vote in an open legislative session to approve the resolution of the appointment for the Zoning Counsel. The Charter, especially Sections 204, 206, and 216, does not permit the Council to informally “vote” to approve the contract of the Zoning Counsel in secret. Like the Department of Justice’s maneuvers to avoid application of the Federal Vacancies Reform Act, Howard County’s attempt to avoid a public Council vote regarding the Zoning Counsel flies in the face of standard rules of statutory construction, the Council’s Rules of Procedure, and common sense.

The Maryland Supreme Court held

We give effect to the statute as it is written if the statutory language is unambiguous when construed according to its ordinary and everyday meaning. *Walzer v. Osborne*, 395 Md. 563, 571, 911 A.2d 427, 431 (2006); *City of Baltimore Development Corp. v. Carmel Realty Assoc.’s*, 395 Md. 299, 319, 910 A.2d 406, 418 (2006); . . . “We do so ‘on the tacit theory that the Legislature is presumed to have meant what it said and said what it meant.’” *Walzer*, 395 Md. at 572, 911 A.2d at 432, quoting *Witte v. Azarian*, 369 Md. 518, 525, 801 A.2d 160, 165 (2002).

Harford Co. v. Saks Fifth Ave. Dist. Co., 399 Md. 73, 923 A.2d 1, 8 (2007). Therefore, a vote regarding the Zoning Counsel is like any other vote on resolutions by the Council including pre-filing of the resolution, introduction of the resolution, a public legislative hearing, public agendas, a vote at a legislative session, and a recording of the action in the Journal. See Charter Section 208.

VI. A NOTE ON TIMING

If the County Council chooses to act, the violations of the Charter and County Code discussed herein could be cured by following the regular legislative process and approving the resolutions of appointment at its March 2, 2026 Legislative Session. Yet, there now remain fewer than 150 days until the June 23, 2026 primary election date deadline for the Zoning Board to take final action on zoning matters. Code Section 16.211. With the Council preoccupied by budget season in April and May, it is already questionable that the Zoning Board could hear and sign the Decision and Order in this instant case before June 23.

Not even accounting for scheduling issues, motions, the time to hear the case, and other delays, the Zoning Board Hearing Examiner has 60 days after the conclusion of the evidentiary hearing to issue its report. Then the parties have 20 business days to file exceptions and another 20 business days to respond. See Code Section 16.203A. This maximum period is approximately four months. If the Zoning Board Hearing Examiner instantly issues the report, this time could be cut to about two months. Then the Zoning Board needs to schedule its hearing. Zoning Board Rule Section F.1.a. provides:

- a. In a piecemeal map amendment or development plan case, the Zoning Board shall make its decision finally disposing of the petition within one hundred twenty (120) days after the Hearing Examiner files its report with the Board Administrator, or within one hundred fifty (150) days if exceptions are filed.

At some point, the Zoning Board will lack the ability to issue a Decision and Order by the June 23 deadline in this case. The 120 or 150- day periods will now all run past June 23. To consider this another way, at some point, if the proceedings, including signing the Decision and Order, run past June 23, the ability of the Zoning Board to comply with the 150-day deadline will be foreclosed by the primary date deadline, requiring the newly seated Zoning Board to take up the matter—in violation of the time limits in the Zoning Board Rules for final action. These issues

could be resolved by making a determination that the current Zoning Board will not be taking action, and delaying the start of proceedings until Fall 2026 to allow the newly elected Zoning Board to hear the case in compliance with all of the applicable timing deadlines.

THEREFORE, Protestant, Joel B. Hurewitz respectively requests that

1. Joyce Nichols be disqualified as Zoning Board Hearing Examiner; and
2. Nathaniel Forman be disqualified as Zoning Counsel

until such time as they are lawfully appointed by resolution of the Howard County Council as provided in the Howard County Charter.

Alternatively, Protestant respectfully requests that the Zoning Board declare that the positions of Zoning Board Hearing Examiner and Zoning Counsel are vacant and rescind its decision to have the Zoning Board Hearing Examiner hear the case.

Respectfully submitted,



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January 26, 2026

Jack Smith: "I have seen how the rule of law can erode."