

IN THE MATTER OF * **BEFORE THE**
ZB 1132M * **HOWARD**
COLUMBIA CONCEPTS, LLC * **COUNTY**
* **ZONING BOARD**

**PROTESTANT JOEL B. HUREWITZ’S MOTION FOR THE ZONING BOARD TO
RECONSIDER ITS DECISION TO HAVE THE ZONING BOARD HEARING
EXAMINER HEAR ZB 1132M COLUMBIA CONCEPTS, LLC**

Protestant, Joel B. Hurewitz a resident, registered voter, Columbia Association annual charge payer, and taxpayer of Howard County, Maryland hereby moves:

For the Zoning Board to reconsider its motion to have the Zoning Board Hearing Examiner hear ZB 1132M due to substantial mistake, inadvertence, or irregularity.

In support of this motion, Joel B. Hurewitz states as follows:

**I. THE HOWARD COUNTY COUNCIL HAS NOT MADE AN
APPOINTMENTS OF THE HEARING EXAMINER BY
COUNCIL RESOLUTION**

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.

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, and the Zoning Board Hearing Examiner.



Howard County Council

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

COUNCILMEMBERS

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Christiana Rigby, Vice Chair
District 3
Liz Walsh
District 1
Deb Jung
District 4
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), and 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. 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, and Zoning Board Hearing Examiner.

Former Board of Appeals Hearing Examiner Katherine Taylor in her October 6, 2025 letter to the County Council claimed that she did not understand why the Council, without public explanation, chose not to extend her contract in a closed meeting. She also questioned the hearing examiner contract process and asked the Council to:

(2) correct the record to include a legal justification as to why the renewal or nonrenewal of a hearing examiner contract was proper for a closed session, provide therein an explanation as to why the four prior renewal decisions were not made in closed session, and state why the 2025 decision differs from the prior decisions.

Taylor continued:

At a basic level, I deserved communication that was out in the open and handled in a professional and courteous manner. When public servants lose their jobs, or contracts, for upholding the law rather than bending to pressure, without any rational basis, public trust is the true casualty.

Similarly, the public is deprived of trust when the initial appointment and renewals were made in secret and without following the County Charter.

session. Hearing Examiners are not county employees either under their contracts or under the law.⁴ The council does not supervise, oversee, or evaluate the hearing examiners. The only provision within the contract that provides the council with any supervisory or evaluative discretion over the hearing examiner term is the clause that states: "Termination. Hearing Examiner serves at the pleasure of the County Council who, *by a vote of two-thirds of its members*, may terminate this contract in whole or in part."⁵

I delayed addressing this issue with you because at the time I received the call from Liz Walsh, I was caring for my mother who was terminally ill and who subsequently passed away. While I consider further action, I am requesting now that the council (1) correct the record to clarify that the renewal or nonrenewal of a hearing examiner contract should not have been discussed in closed session and publish the minutes of the portion of the session that should not have been closed the same way it publishes the minutes of other open sessions, or (2) correct the record to include a legal justification as to why the renewal or nonrenewal of a hearing examiner contract was proper for a closed session, provide therein an explanation as to why the four prior renewal decisions were not made in closed session, and state why the 2025 decision differs from the prior decisions.

I understand and accept that the appointment of a hearing examiner—and even the decision not to renew a contract—is the Council's prerogative. I also accept that my contract was not renewed. What I do not accept is the way this was done: quietly, without transparency, under the guise of a "personnel matter,"⁶ and apparently in response to pressure from a few unhappy landowners. This is not the Howard County I have served for most of my career, nor is it the way our county government should work. At a basic level, I deserved communication that was out in the open and handled in a professional

⁴If this were, in fact, a personnel matter regarding an employee, the law would have required that the affected "employee" be provided (1) a stated and lawful reason for the personnel action, (2) rights under Title 1 of the Howard County Code, and (3) the pay and benefits to which county employees are entitled, including participation in the county's retirement plan, the payment of the employer's share of employment taxes and the withholding and remittance of federal and state income taxes.

⁵The Council vote was not two-thirds, but was 3 to 2, with Councilwomen Walsh and Jung voting against the motion to "renew a contract for one specific person," which by implication was a decision not to renew my contract, and the vote to renew only one of the hearing examiner contracts.

⁶The Minutes of the May 8, 2025, Session state that the chair moved "that the meeting be closed in accordance with Section 3-305(b)(1) of the General Provisions Article of the Annotated Code of Maryland to discuss a personnel matter, the topic was compensation, employment, performance evaluation, and assignment of one or more specific employees." The minutes state further: "Council Member Youngmann moved to renew a contract for one specific person. Council Member Rigby seconded the motion. The roll call vote called by the Administrator on the motion to renew a contract for one specific person was: Yea: Council Members Rigby, Jones, and Youngmann. Nay: Council Member Jung and Walsh. The motion to renew a contract for one specific person passed."

As with Taylor, regarding Nichols' appointments as Board of Appeals Hearing Examiner, 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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COUNCILMEMBERS

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Christiana Rigby, Vice Chair
District 3
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Deb Jung
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David Yungmann
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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, and Zoning Board Hearing Examiner 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 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 provided to the County Council 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, 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.**²

² Council Rule 1.015(d) is an invalid rewrite of Charter Section 216 because it added an "or" allowing special assistance if it is in the budget or by resolution: "*Other Assistance.* The Council may, by resolution **or** as provided in the County budget, employ such legal, financial, technical *or* other assistance as it may from time to time deem necessary."

Charter Section 216 (emphasis added). The Nichols contract specifically provides in Paragraph 1 that “The Hearing Examiner position is deemed to be the provision of legal services to the County Council.”



AGREEMENT FOR HEARING EXAMINER SERVICES FOR THE HOWARD COUNTY COUNCIL

THIS AGREEMENT is made as of this 31st day of December, 2019, between the HOWARD COUNTY COUNCIL ("County Council") and Joyce B. Nichols, Attorney at Law ("Hearing Examiner").

In consideration of the mutual promises herein contained, the parties agree as follows:

1. Services. The County Council retains the services of Hearing Examiner, an attorney admitted to practice law in the State of Maryland, and in good standing, to provide services as the Hearing Examiner for matters within the jurisdiction of the Board of Appeals. The Hearing Examiner position is deemed to be the provision of legal services to the County Council. The duties of this position include, but are not limited to the following:
 - a. Except as otherwise provided by law, the Hearing Examiner will provide the first hearing for all matters which the Howard County Code or the Zoning Regulations authorize the Board of Appeals to hear and decide. These shall include, but not be limited to:
 - Authorizing variances from the terms of Zoning Regulations as necessary to avoid arbitrariness and to obtain substantial justice within the spirit of the Zoning Regulations, except for governmental uses of land, which may be authorized only by the County Council;
 - Hearing and deciding appeals where it is alleged there is an error in any order, requirement, decision, or determination made by any administrative official in the application, interpretation, or enforcement of the Planning, Zoning and Subdivisions and Land Development Regulations title of the Howard County Code, except that wherever in the Code or Zoning Regulations a person is authorized to appeal a decision made by an administrative agency after an opportunity for a contested case hearing, the appeal will be heard and decided by the Board of Appeals; and

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). Charter Section 502. - Board of Appeals hearing examiner uses “appoint” another two times:

The County Council may **appoint** hearing examiners to conduct hearings and make decisions concerning matters within the jurisdiction of the Board of Appeals. Decisions of an examiner may be appealed to the Board of Appeals as provided by law. The Council shall establish by legislative act the duties, powers, authority and jurisdiction of any examiner appointed under this section. An examiner shall be a member in good standing of the Bar of the Maryland Court of Appeals and at the time of **appointment** shall have knowledge of administrative and zoning law, practice, and procedure. An examiner may be removed from office by vote of two-thirds of the members of the Council.

Charter Section 502 (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 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 HAVE NOT BEEN LAWFULLY APPOINTED

The Maryland Supreme Court would find that challenging the authority of the appointment of the Zoning Board Hearing Examiner 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 ("SEC") 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 Examiner is an officer 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 was hired and not appointed pursuant to the Charter. In *Lucia*, the ALJs were hired in violation of the Appointments Clause. Regarding the Zoning Board Hearing Examiner, 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 BOARD CHAIR IMPLIED THAT THIS CASE COULD BE COMPLETED BEFORE THE JUNE 23, 2026 PRIMARY DEADLINE

During the March 11, 2026 Administrative Meeting, Chair David Yungmann stated that there were tentative dates for the Zoning Board to hear the pending Zoning Board matters. Due to the secret hold dates, the public was only given one full business day to change their plans for Friday March 13, 2026 in order to participate in the daytime proceedings. The Zoning Board has posted on its webpage a statement regarding the June 23, 2026 primary deadline:

Zoning Board Scheduling - Councilmanic Election Year

Pursuant to Howard County Code Section 16.211, in any year in which members of the County Council are elected, the incumbent Councilmembers shall not take final action on any zoning applications after the date of the primary election, as set by law, and until the newly elected County Council members have qualified and taken office. As the incumbent Councilmembers comprise the Zoning Board, this Code provision extends to those decisions as well. Final action has been determined to mean issuance of a signed written decision of the Zoning Board, not just a vote to approve or deny an application.

The primary election date this year is June 23, 2026. To provide sufficient time for any written decisions to be drafted and signed by the Board members prior to the deadline, the Zoning Board plans to conclude decision-making on cases toward the end of April.

The Board will attempt to finish as many cases as possible, but cases in their early stages may not conclude in time to meet these deadlines. Cases that have not yet begun the process are unlikely to conclude in time. Any cases that are

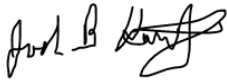
not concluded within these deadlines could be deferred until the next County Council takes office in December and begins to schedule Zoning Board meetings in 2027.

<https://cc.howardcountymd.gov/zoning-land-use/zoning-board> The Zoning Board implied by its actions that it intends to complete this case by the end of April 2026. However, none of the Board members acknowledged the time for exceptions to the Report of the Hearing Examiner. Pursuant to Code Section 16.203A(d)(2) exceptions may be filed “within 20 business days after the Hearing Examiner's report is issued” and “[a]ny party may file a written response to any other party's exceptions within 20 business days of the filing of any exceptions.” Assuming that the report is issued on March 31, the exceptions period will not expire until after Memorial Day. The inadvertence of the Zoning Board to acknowledge that it cannot meet its desired schedule to complete the case before the June 23, 2026 primary election justifies not rushing the hearing in this matter and giving the public adequate notice to participate.

THEREFORE, due to the Zoning Board's substantial mistake, inadvertence, or irregularity, Protestant, Joel B. Hurewitz respectfully requests

1. that the Zoning Board reconsider its decision to have the Zoning Board Hearing Examiner hear ZB 1132M, and
2. that the Zoning Board retains jurisdiction of ZB 1132 at least until such time as Joyce Nichols is lawfully appointed as Zoning Board Hearing Examiner by Council resolution.

Respectfully submitted,



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March 12, 2026

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