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

* *

MEMORANDUM OF LAW OF PROTESTANT JOEL B. HUREWITZ

Protestant Joel B. Hurewitz submits this Memorandum of Law in the above-captioned matter. Part I addresses issues of fact and law related to the Zoning Board's quasi-judicial proceedings. Part II addresses the legislative requirements of Howard County Charter Section 202(g) by the County Council after the Zoning Board makes its decisions regarding the PDP amendments and establishment of the boundaries of the Village Center.

PART I

THE PETITION SHOULD BE DENIED BECAUSE THE PETITIONER HAS IGNORED THE PARKING FOR THE CHURCH

In Petitioner's Exhibit 5 on Page 5 and the testimony thereto, the Petitioner acknowledged the Civic and Religious Life of the Village Center, but its concern for the church property ended there. Inexplicably, the Petitioner's ZB-1132M Covenants & Deeds Restrictions omitted the September 1981 Deed and Agreement of Easement between Columbia Parks and Recreation Association and the Long Reach Interfaith Center, Inc. granting the Interfaith Center and its successors a perpetual parking easement. Liber 1072 Folio 49. Howard County Zoning Regulation ("HCZR") Section 133.0.B.4 states in part:

4.Required minimum parking may be provided on a separate lot from the principal use if:

* * * *

e.The parking facility is subject to recorded covenants or easements for parking, or other proof is provided that the continued use of the parking area is guaranteed throughout the life of the land use.

The recorded easement fulfills the requirements of the zoning regulations. The Petitioner cannot ignore the easement, and the Zoning Board cannot allow the parking lot to be built upon without providing the church property with its required offsite parking. SDP 92-118 approved the church for 167 spaces, including 144 offsite. http://data.howardcountymd.gov/scannedpdf/SDP/SDP-92-118.PDF

The exhibits and the testimony of Petitioner's witnesses repeatedly testified that the parking for the church was not included because "it was not part of the development area." However, the parking for the church is included within the development area. When cross examined about pick up and drop off areas for the church the response from Katie Wagner ("Wagner") was "Not part of the development area." Whether there would be Uber drop offs at the church's small onsite parking area, the response was the same: "Not part of the development area." Petitioner's Exhibit 9 and the testimony of Wagner discussed in detail the parking demand for the planned particular uses, all the while omitting the parking demand for the church. Petitioner's Memorandum of Law states:

> Ms. Wagner testified with a robust technical foundation confirming that the proposed 1,007 on-site parking spaces are adequate for the development as proposed, accounting for the mixed-use nature of the site, the time-of-day variations in demand across uses, the availability of public transit, and the vehicle availability and travel behavior characteristics specific to this location. The concerns expressed by opposition witnesses, while reflective of genuine community interest, do not rebut the technical methodology and conclusions of the Parking Needs Study.

Memo at 17. The so-called "robust" technical foundations totally ignored the legal and practical issues of parking for the church. Thus, the opposition's concerns do in fact "rebut the technical methodology and conclusions of a [flawed] Parking Needs Study." *See id.*

In addition, the Petitioner is requesting a major downward deviation in Howard County's parking requirements. More parking is needed than the bare minimum suggested by the Petitioner. For it is not necessarily the church that will suffer if the members and guests of the church park in the Petitioner's lots and structures, it is Petitioner's own uses that will find the parking to be inadequate.

It is for these reasons that the Petitioner's Major Redevelopment fails to comply with HCZR Section 125.0..J.4.a.8 including but not limited to:

> (a) The Village Center Redevelopment will foster orderly growth and promote the purposes of the Village Center in accordance with the planned character of the NT District;
>
> * * *
>
> (d)The location and the relative proportions of the permitted uses for commercial businesses, dwellings, and open space uses, and the project design will enhance the existing development surrounding the Village Center Redevelopment;
>
> * * *
>
> (i) The Village Center Redevelopment is compatible with the surrounding community;

Therefore, the Zoning Board should make findings that the petition does not comply with the Major Village Center Redevelopment criteria in HCZR Section 125.0.J.4.a.(8). HCZR 125.0.J.5.a. (3).

CONSIDERATION OF THE PROXIMITY OF USES ESPECIALLY THE PARK TO THE EXISTING MOTOR VEHICLE FUELING FACILITY

HCZR Section 131.0.O.2.d. states that for a new Motor Vehicle Fueling Facility

> Fuel dispensers shall be located at least **300 feet from any** school, **park**, or day care or assisted living facility. This criterion is not applicable to existing Motor vehicle fueling facilities, except that it shall be applicable if an existing motor vehicle fueling facility proposes an enlargement that includes additional fuel dispensers.

(emphasis added). While technically, this Zoning Regulation does not apply to new uses constructed next to an existing Motor Vehicle Fueling Facility, the Zoning Board should consider as part of the HCZR Section 125.0.J.4.a.(8) criteria whether the uses adjacent to the Motor Vehicle Fueling Facility are appropriate.

IMPACT OF TRAFFIC PATTERNS ON THE SIERRA WOODS APARTMENTS MUST BE CONSIDERED

The property across from the Village Center is the Sierra Woods Apartments. As stated, one of the criteria for a Village Center redevelopment is HCZR 125.0.J.4.a.(8) (i) :"The Village Center Redevelopment is compatible with the surrounding community." The apartment's major ingress and egress will align with the Proposed new Street A. The apartment appears to have minor ingress and egress which is labeled as "Airybrink Ln." See Pettioner's Exhibit 7, Figure 1. Airybrink Ln does not align with Foreland Garth. The complete streets plan for Tamar Drive in Petitioner's Exhibit 7 shows a left turn at the main entrance and a center turn lane at Foreland Garth and Airybrink Ln. However, the plan does not reflect the addition of the new Street A. If left turns in or out of Sierra Woods will be prohibited, especially at the main

entrance with Street A, then the Village Center redevelopment would not be compatible with the surrounding area.

PHASING OF THE DEVELOPMENT MUST BE INCLUDED IN THE DECISION AND ORDER

The Petitioner's Exhibit 5, Page 31 has "Proposed Phasing" for the development. In the documents regarding the Columbia Association, the Petitioner also commits to seamless transition of the Columbia Association and Long Reach Community Association's uses. The Zoning Board required phasing for the previous Long Reach Village Center redevelopment:

> Prior to issuance of a building permit for the 26th townhouse unit, a building permit must be issued for a building that includes non-residential uses. If the building designated on the Concept Plan as "A" is constructed, it must contain a minimum of 17,500 square feet of retail, restaurant, and office space, excluding institutional space to be occupied by the Columbia Association, Inc. and/or the Long Reach Community Association. If the Building designated on the Concept Plan as "B" is constructed, it must contain a minimum of 17,500 square feet of retail, restaurant, and office space, excluding institutional space to be occupied by the Columbia Association, Inc. and/or the Long Reach Community Association. Between Building "A" and "B" there shall be at a minimum of a combined total of 17,500 square feet of retail/restaurant space.

ZB 1121M, page 17. Similar, phasing benchmarks must also be required in any approval of the instant redevelopment plan.

RESPONSE TO PETITIONER'S EXHIBIT 2 - COUNCIL RESOLUTION 22-2014

The power for any county or municipality in Maryland to proceed with urban renewal is found in Article III, Section 61 of the Maryland Constitution . The local government, even a home rule Charter County like Howard, only has this power if the General Assembly specifically grants it by passing a public local law. In 1961, the General Assembly passed Chapter 877 which granted Howard County urban renewal authority. The Constitution defines "slum area" and "blighted area." The Constitution states that a "blighted area shall mean an area in which a

majority of buildings have declined in productivity by reason of obsolescence, depreciation or other causes to an extent they no longer justify fundamental repairs and adequate maintenance." This definition was incorporated as part of Chapter 877 and is found in Section 13.1102 (c) of the Howard County Code. When the Council passed resolution CR22-2014 (Petitioner's Exhibit 2) initiating the Long Reach Urban Renewal, they did not even attempt to deal with the constitutional and legal definition for "blighted area." Paradoxically, the resolution acknowledged the Urban Renewal Law in the County Code in Lines 1-3 of Page 1:

> **WHEREAS**, Howard County's Urban Renewal Law (Howard County Code, § 13.1100 et. seq.) provides for County acquisition of private property for the purpose of urban renewal when an area of the County becomes blighted; and

Yet, immediately thereafter in in Lines 5-8, Page 1, rather than comply with the definition for "blighted area" in the Maryland Constitution, Chapter 877, and Section 13.1102 (c) the Council Resolution created an entirely new definition:

> **WHEREAS**, the County Council finds that, over time, the Long Reach Village Center has become a blighted area, as demonstrated by these facts 1) a majority of the retail space is vacant; 2) many of the buildings are poorly maintained; 3) ongoing and increasing safety concerns have been expressed by community members, village center occupants and visitors;

Petitioner's Exhibit 2.

Not one of those three justifications are found in the Constitution or the County Code. Being vacant and poorly maintained is not enough; a building must be in such poor condition that repairs and maintenance are not justified. Furthermore, of note is the third point that "safety concerns have been expressed" not that there were in fact actual safety concerns. Howard County initiated the urban renewal process just because some people felt uncomfortable.

ESTABLISHING THE BOUNDARIES OF THE VILLAGE CENTER

The Zoning Board is required by HCZR 125.0.J.5.b. to establish the boundaries of the Village Center[1]. In ZB 1121M the

> Zoning Board f[ound] that the Petitioner, DPZ and the Village Board all agreed that the boundaries of the Long Reach Village Center shall be the area delineated by the Village Center Boundary in Petitioner's Exhibit 1 1 (Concept Plan for PDP Amendment) and augmented by the additional area shown on page 5 of Petitioner's Exhibit 5, the approved 2012 LRVC Master Plan.

ZB 1121M p. 8-9. These boundaries included the BGE right-of-way zoned R-12 Once established, the boundaries of the Village Center make properties subject to major redevelopment under HCZR 125.0.J. and minor redevelopment under HCZR 125.0.K. See HCZR 125.0.K.2. Even though it is highly unlikely that there would be any development, by including the BGE property in the regulations for the NT District, effectively amounts to a rezoning of the property. A property outside of the NT District cannot comply with the regulations of 125.0. This was a mistake of law and should be corrected in the instant matter.

The boundaries of the Village Center should be the area of the Petitioner's development site, the Exxon gas station, and the properties of the Washington Ghanaian SDA Church. In other words, the boundaries should be the area bounded by Tamar Drive, Cloudleap Court, Foreland Garth, The Timbers at Long Reach Apartments, (FNA Lazy Hollow Apartments), Route 175, and Longwood House. [2]

Additionally, after the boundaries of the Village Center are established, the HCZR state:

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[1] The requirements of Section 202(g) of the Howard County Charter will be discussed in Part II.

[2] As noted during the testimony of Joel Hurewitz, the Petitioner's Exhibit 9, Figures 3, 4, and 5 all incorrectly include the gas station as part of the "Project Site." This is incorrect; however, the gas station site should be included in the boundaries of the Village Center.

> If the petition is granted, reproducible copies of all approved plans, and copies of all approved supporting documents such as any development guidelines and standards and the design guidelines, shall be certified as approved by the Zoning Board and verified copies of the same shall be forwarded to the Department of Planning and Zoning, the Village Board, and the petitioner. All parties notified pursuant to Section 125.0.J.2, and any other property owner within the boundaries decided by the Zoning Board, shall be provided with notice of the Zoning Board's Decision.

HCZR 125.0.J.5.f.. The Department of Planning and Zoning have admitted in Public Information Act responses that they do not have the required records from the previous establishment of the Village Center boundaries for Wilde Lake and Long Reach.. The documents were previously considered as exhibits in the Hickory Ridge Village Center Redevelopment ZB 1119M.

https://cc.howardcountymd.gov/sites/default/files/2022-10/ZB1119MOppositionExhibit%2362_HurewitzPIALngRdgeVllgCntrBoundaries.pdf and https://cc.howardcountymd.gov/sites/default/files/2022-11/ZB1119MOppositionExhibit%2359_HurewitzPIAWildeLakeVillageCenter.pdf The Zoning Board should take any necessary steps to see that the boundaries are properly recorded and the owners are notified.

HOWARD COUNTY DEPARTMENT OF COUNTY ADMINISTRATION
3430 Courthouse Drive ▪ Ellicott City, Maryland 21043 ▪ 410-313-2022

Mark Miller, Administrator, Office of Public Information
msmi@ENGHOWARDCOUNTYMD.GOV

FAX 410-313-3390

June 24, 2020

Joel Hurewitz
joelhurewitz@gmail.com

Dear Mr. Hurewitz:

The following is in response to your email to Howard County Government's Office of Public Information, 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 June 10, 2020 at 9:50 p.m.

Specifically, you have asked for "... documents, if any, other than the Decision and Order itself, concerning the boundaries of the Wilde Lake Village Center made with regard to ZB 1096M Wilde Lake Business Trust made after the Decision and Order of the Zoning Board as required by Howard County Zoning Regulation 125.0.J.5.f. including specifically any reproducible maps of the defined village center boundaries and specific notification regarding the boundaries to any property owners within the defined village center boundaries."

The County's Department of Planning and Zoning has two records (three pages in total length) responsive to your request, which you will find attached.

While Howard County has the right to charge a copying fee of $0.25 per page for a black and white paper copy, as mentioned on page 10 of Howard County Council Resolution No. 76-2019, electronic copies of the responsive records exist and are therefore free of charge. In addition, Howard County has the right under the Public Information Act to charge you for search time in excess of two hours; however, no more than two hours was expended on your request.

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.

Sincerely,

Zoning Case ZB1119M - HRVC

Applicant/Protestant

Exhibit # 59 Date 9/24/20

Alexandra Bresani
Office of Public Information

HOWARD COUNTY DEPARTMENT OF COUNTY ADMINISTRATION
3430 Courthouse Drive ▪ Ellicott City, Maryland 21043 ▪ 410 313-2022

Mark Miller, Administrator, Office of Public Information
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FAX 410-313-3090

January 29, 2020

Joel Hurewitz
joelhurewitz@gmail.com

Dear Mr. Hurewitz:

The following is in response to your email to Howard County Government's Office of Public Information, 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 22, 2020.

Specifically, you stated: "Relevant to the determination of the village center boundaries to be made by the Zoning Board in ZB 1119 - HRVC Ltd. Partnership, c/o Kimco Realty Corp. please provide the documents, other than the Decision and Order itself, if any, concerning **the boundaries of the Long Reach Village Center** made with regard to ZB 1131M - Orchard Development Corp. made after the June 25, 2018 Decision and Order of the Zoning Board as required by Howard County Zoning Regulation 125.0.J.5.f. including specifically any **reproducible maps of the defined village center boundaries** and **specific notification regarding the boundaries** to any property owners within the defined village center boundaries. "

The County's Department of Planning and Zoning has no records responsive to your request.

While Howard County has the right under the Public Information Act to charge you for search time in excess of two hours, no more than two hours was expended on your request.

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.

Sincerely,

Alexandra Bresani
Office of Public Information

Zoning Case 1119M - HRVC
Applicant/Protestant
Exhibit # 63 Date 4/29/21

PART II

SECTION 202(g) OF THE HOWARD COUNTY CHARTER REQUIRES AMENDMENTS TO THE COLUMBIA PDP AND THE ESTABLISHMENT OF THE BOUNDARIES OF THE VILLAGE CENTER TO BE FINALIZED WITH AN ORIGINAL BILL BY THE COUNTY COUNCIL

Background History of Zoning in Howard County

In 1965, the Howard County Commissioners approved the new town zoning for Columbia and stated: "That the Preliminary Development Plan constitutes a General Land Use Plan for the area covered." Howard County Board of Commissioners, Zoning Case #412, Opinion and Order, Aug. 10, 1965, 2 (Apx 1). Thereafter, as the Supreme Court expounded:

> Howard County adopted a charter form of home rule in 1968. *Turf Valley Assocs. v. Zoning Bd. of Howard Cnty.,* 262 Md. 632, 634 (1971). The Charter is, "in effect, a local constitution," which "fixes the framework for the organization of the county government." *Ritchmount P'ship v. Bd. of Supervisors of Elections,* 283 Md. 48, 58 (1978). The Charter vests the executive power in the County Executive, *see* § 302, and the legislative power in the County Council, *see* § 202.

Kendall v. Howard Cnty, 431 Md. 590, 66 A. 3d 684, 686 (2013).

In 1971, the Howard County "Council added to its legislative hat another piece of headgear when it made for itself a zoning board hat." *Turf Valley* at 643. The *Turf Valley* Court further stated "The Council did not absolutely abrogate its powers in relation to zoning. It can abolish the Board at any time and itself zone and zone. In the meantime it empowered the Board to amend, supplement, change or repeal zoning regulations, districts, boundaries and restrictions.'"*Id.*

Rather than the County Council taking back its zoning hat, Question B was petitioned to the voters of Howard County to reform the procedures for zoning actions. The *Kendall* Court summarized this history:

In 1994, the people of Howard County successfully petitioned to referendum, and the majority of voters approved at the polls, a charter amendment clarifying that certain acts related to land use taken by the County must be passed by original bill, and therefore are subject to the people's right to referendum. See Charter §202(g) (Editor's note). That amendment was codified at § 202(g) of the Charter, which reads:

> 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.

Kendall at 687-688. Section 202(g) of the Howard County Charter by its plain language creates a binary choice: all zoning actions other than those under the "change and mistake" principle must be passed by the County Council by original bill subject to referendum.

Immediately after passage of Question B, Howard County sought to redefine and undermine the effect of Section 202(g). (Apx 11-12). While implementing its application for comprehensive zoning and zoning regulation amendments, Howard County has conspired for over three decades to generally ignore any application of Section 202(g) to other zoning actions or to apply it to amendments to the Columbia PDP. (Apx 10-12).

ZB 1119M, HRVC Petitioner Admitted In Its Closing Memorandum That The Amendment To The PDP Constitutes An Amendment, Restatement And/Or Revision To The General Plan

HCZR Section 125.B.3.c. states "that the Preliminary Development Plan constitutes a general land use plan for the area covered thereby, designed to meet the objectives set forth in these Regulations." This was included in the prior Decisions and Orders ("D&Os") for village center redevelopment. In ZB 1119M, HRVC Limited Partnership, the Hickory Ridge Village

Center Petitioner ("HRVC Petitioner") acknowledged these prior D&Os in its Closing Memorandum:

> The ZB has clarified this point in previous cases that the only question presented by Sec. 125.0,B.3 in existing NT districts is whether the revised **"PDP constitutes a general land use plan for the area covered thereby, designed to meet the objectives set forth in these regulations."** Wilde Lake Business Trust, ZB Case No. 1096M (D&O July 9, 2012) ("Wilde Lake D&O") at 23-24; Orchard Development Corp., et al, ZB Case No. 1121M (D&O June 25, 201 8) ("Long Reach D&O") at 7.

HRVC Petitioner's Memo p. 4, footnote 4 (emphasis added) (Apx 4). https://cc.howardcountymd.gov/sites/default/files/2022-10/ZB1119MPetitionerFinalClosingMemorandum.pdf More importantly, HRVC Petitioner admitted in a full section of its memorandum that

> **a. The PDP as Amended Constitutes a General Land Use Plan for the Area Covered Thereby, Designed to Meet the Objectives Set Forth in These Regulations.**
>
> Petitioner presented substantial evidence upon which the Board can find that **the Preliminary Development Plan does in fact constitute a general land use plan for the area covered thereby**, designed to meet the objectives set forth in the HCZR. Consistent with the approvals for the proposed Major Village Center Redevelopments in Wilde Lake and Long Reach, the preservation and promotion of the community's health, safety and welfare by redeveloping the HRVC in accordance with CB 29-09 and PlanHoward 2030, the instant proposal seeks to provide future growth and development in a way to represent the most beneficial and convenient relationships among the residential, non-residential and public areas within the this area for such uses under Sec. 100.A of the HCZ

Id. at p. 9 (emphasis added) (Apx 5). HRVC Petitioner also claimed that the amendments to the PDP will essentially restate the General Plan because the "PDP amendment would not result in a change in the Land Use Chart or Map on the PDP. It only amends the Density Chart on the PDP." Closing Memo at 31 (Apx 6). Thus, this PDP amendment is a restatement of the General Plan. Conversely, HRVC Petitioner acknowledged that if the project moved forward, there will be additional credited open space. *Id.* Thus, this would be an amendment to the General Plan.

Similarly, the Petitioner in this matter also cited the Zoning Board's Decisions in ZB 1096M and ZB 1121M, and concluded that "the proposed VCR constitutes a general land use plan for the area covered thereby." Petitioner's Memorandum of Law, p. 7. Thus, there is no dispute that the PDP amendment constitutes an amendment to the general plan. Thus, Section 202(g) requires that the County Council legislatively approve the PDP amendments.

The Establishment Of The Boundaries Of A Village Center Constitute An Amendment, Restatement, And/Or Revision To The Howard County Zoning Maps

As stated above, after the village center boundaries are established, it adds procedures and requirements for any subsequent changes to the property by the owner: "then a village center property owner shall comply with Section 125.0.K.2.c, d or e." HCZR Section 125.0.K.2. The HCZRs essentially creates a village center development area. It requires notice to "any property owner within the boundaries decided by the Zoning Board." HCZR Section 125.0.J.5.f. These procedures in creating a mapped development area are the very definition of a map amendment. Thus, for all of these reasons, Section 202(g) of the Charter requires that the County Council and not the Zoning Board formally establish the boundaries of the village center.

Section 202(g) Of The Howard County Charter Must Be Interpreted To Effectuate The Intent Of The Voters

The Charter must be given effect in accordance with the clear meaning of the words: all zoning matters other than change/ mistake must be done by original bill by the County Council subject to referendum. See *Atkinson v. Anne Arundel Cnty.*, 428 Md. 723, 53 A.3d 1184, 1197 (2012) ("[No] words are to be omitted, and effect is to be given to all words in the ... charter."). This includes changes to the New Town district. This was the intent of the framers—those who petitioned the amendment to referendum, especially Susan Gray, and the voters of Howard

County who approved the Charter amendment.

The Maryland courts have repeatedly stated the principles involved in statutory interpretation which are also used equally in interpreting a charter. In one 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). As the Appellate Court previously found in interpreting other provisions of the Howard County Charter in 1983, the language of 202(g) is unambiguous.

Furthermore, the Appellate Court has stated additional principles used for interpreting a county charter:

> In ascertaining and effectuating the real intention of the drafters of the Charter in the enactment of § 309, we recognize the rule that a plainly worded statute must be construed without forced or subtle interpretations designed to limit its scope. ...Thus, we may not omit words from a statute to make it express an intention not evidenced in its original form. ... On the other hand, while the language of the statute is the primary source for determining the legislative intention, the plain meaning rule is not absolute, as the statute must be construed reasonably with reference to the purpose, aim, or policy of the enacting body. ...Thus, we have said that a statute must be construed in context, because the meaning of the "plainest language may be governed by the context in which it appears." ... In this regard, words in a statute must be read in a way that advances the legislative policy involved. ... Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment. ... Moreover, in

such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent. ...

Baltimore Cnty. Coalition Against Unfair Taxes v. Baltimore Cnty., 321 Md. 184, 203-204, 582 A.2d 510 (1990) (internal citations omitted).

The Appellate Court has further elaborated on how to interpret a charter and the sources that may be used to aid in the interpretation:

Judge Levine, writing for the Court of Appeals in *Ritchmount P'ship v. Bd. of Sup'rs of Elections for Anne Arundel Cty.*, explained:

> Article XI-A, s[ection] 1 effectively reserves to the people of this state the right to organize themselves into semi-autonomous political communities for the purpose of instituting self-government within the territorial limits of the several counties. The means by which the inhabitants acquire such autonomy is the charter. Being, in effect, a local constitution, the charter fixes the framework for the organization of the county government. It is the instrument which establishes the agencies of local government and provides for the allocation of power among them.

283 Md. 48, 58, 388 A.2d 523 (1978) (internal citations omitted). The Court of Appeals has stated repeatedly, "'a county charter is equivalent to a constitution.'"... We interpret charters "under the same canons of construction that apply to the interpretation of statutes." .... Our guiding principle in doing so is to ascertain the drafters' intent in amending the charter. ..."To determine what that intention was, we look first to the language of the amendment." ... "If the meaning of the amendment is plain and unambiguous, we need look no further." ... When the text invites multiple interpretations, however, we must turn to the various interpretive tools at our disposal to resolve the resulting ambiguity. For instance, we consider the practical result of our decision, seeking to "'avoid constructions that are illogical, unreasonable, or inconsistent with common sense.'" .... **We may also look to the greater context surrounding the enactment—its legislative history; other contemporaneous enactments by the drafters; and similar provisions in other counties, the state code, and, if relevant, federal law on the subject—to distill a more complete understanding of the drafters' intent.**

Atkinson v. Anne Arundel Cnty., 236 Md. App. 139, 181 A.3d 834, 845 (2018); hereinafter "*Atkinson (2018)*" (emphasis added) (internal citations omitted).

In *Atkinson (2018),* the Appellate Court presented what is a nonexclusive list of sources used to determine "the greater context surrounding the enactment." *Id.* This procedure is in accord with that suggested in "Ghosthunting: Searching for Maryland Legislative History," Michael S. Miller, Director of the Thurgood Marshall State Law Library (1998), https://mdcourts.gov/lawlib/research/research-guides/ghost-hunting-md-legislative-history (last accessed December 8, 2023). Miller stated that "the legislative history and construction of [other similar] statutes is often persuasive evidence of the purpose and meaning of [a] law." *Id.* In addition, "[c]ontemporary newspapers and journal articles may explain legislation or track the history of an important enactment." *Id.*

Thus, these principles will be applied to determine the meaning of Section 202(g). While a plain reading of the provision shows that it is unambiguous, the very fact that Howard County has failed to properly implement it demonstrates that others have given it alternative meaning, and thus, for purposes of interpretation, Section 202(g) will be treated as being ambiguous. Therefore, documentation and outside sources will be used to show its meaning to the voters who approved the charter amendment in 1994, how the County has sought to reinterpret the Charter provision, how other county residents have tried to adjudicate the provision, and how similar provisions and procedures for rezoning are applied in other Maryland charter counties and the City of Westminster. These sources must be considered because

> [t]he plain meaning rule, however, is not absolute. ... "The plain meaning rule is `elastic, rather than cast in stone [,]' and **if `persuasive evidence exists outside the plain text of the statute, we do not turn a blind eye to it.'"** ...

McKay v. Department of Public Safety, 150 Md. App. 182, 819 A.2d 1088, 1095 (2003) (emphasis added) (internal citations omitted).

Howard County resident Susan Gray drafted and petitioned Question B to referendum of the voters of Howard County in 1994 with the intention that Section 202(g) create a binary

choice of those zoning actions that were change/mistake and all other actions which were not. See Nelson, Erik, "Defeated candidate claims win, Question B success delights Gray," *Baltimore Sun*, Nov. 10, 1994, 1B, 9B (p. 189, 197), https://www.baltimoresun.com/news/bs-xpm-1994-11-10-1994314033-story.html (Last accessed with paywall, December 8, 2023). The meaning of the charter amendment is further illustrated by the understanding of the electorate who approved it. The voter guides published by both the Howard County League of Women Voters and in the *Baltimore Sun* also clearly expressed this understanding:

> All except the "piecemeal" zoning cases (subject to the "change or mistake" principle) would be introduced as original bills in the County Council primarily on the recommendation of the County Executive's office. ... The bills passed would then be subject to executive veto and referendum.

Howard County League of Women Voters, "1994 Voters' Guide General Election" p. 7 and "Voters' Guide 1994," *Baltimore Sun,* October 30, 1994 (Apx 8-9). Therefore, the voters who approved Question B are "**presumed to have meant what [they] said and said what [they] meant.**'" *Harford Co, v. Saks Fifth Ave. Dist. Co.,* 399 Md. 73, 923 A.2d 1, 8 (2007) ((quoting *Walzer v. Osborne*, 395 Md. 563, 572, 911 A.2d 427, 432 (2006) (quoting *Witte v. Azarian*, 369 Md. 518, 525, 801 A.2d 160, 165 (2002))).

The Effect Of Question B Was Immediately Undermined After It Was Approved By The Voters Of Howard County

In the months after passage of Question B, it was recognized that the way to avoid its restrictions was by change/mistake petitions: "That uncertainty carries the potential to wreak havoc with major development projects and could force developers to seek only smaller, piecemeal changes, which are not subject to Question B's provisions." Nelson. Furthermore, "The amendment's authors say all zoning changes except those that correct previous mistakes

now must be submitted to the council as legislation." Libit, Howard, "Challenge likely over council vote on zoning rules," *Baltimore Sun*, Feb. 6, 1995 1B (p. 83), https://www.baltimoresun.com/news/bs-xpm-1995-02-06-1995037050-story.html. (Last accessed with paywall, December 8, 2023). Thus, beginning shortly after the voters approved Question B, Howard County sought to redefine and narrow its scope: "Accusing the council of 'illegally subverting the voters' decision,' Question B supporters charge that tonight's council bill violates both the wording and the spirit of the newly passed amendment in how broadly it can be applied." *Id.* Gray was quoted in the *Baltimore Sun*: "'Question B was explicitly written to cover any changes to zoning other than a correction that comes under the specific definition set by the Maryland Court of Appeals. The County Council is trying to exclude them, and that's a big problem.'" *Id.* at 6B.

Almost a decade later, in March 2003, Gray submitted testimony to the County Council expressing her opposition to the appointment of Barbara Cook as County Solicitor. Therein she alleged the conspiracy by Howard County to ignore the plain requirements of Section 202(g):

> --Mid 1990's to now: Office of Law instructed the Zoning Board to decide all "piecemeal" zoning cases other than "change or mistake" cases, not by bill as required by Question B but administratively, not subject to referendum. The Office also systematically drafted and the council passed ordinances designed to change county processes so that the right of referendum was avoided.
>
> * * *
>
> --The Office of Law has repeatedly misinformed the council and task forces established to deal with issues including Question B of the legal relationship between the charter and Question B. In particular, it tells people that Question B must be changed in the Charter since the Charter does not conform to the county regulations. This turns law on its head. The Charter is the local Constitution. Council actions must conform to the Charter, not visa versa. Similarly, the Office instructs that Question B is probably illegal under the due process clause of the US Constitution. As stated above, the Supreme Court held in *Eastlake* that allowing the right of referendum over piecemeal, administrative zoning decisions was not a violation of due process as Ms. Cook claims.
>
> * * *

> I could go on almost indefinitely with examples where I believe Ms. Cook has violated Question B, but I think the above should suffice.

Email Testimony of Susan Gray to Howard County Council, March 2003, p. 3 (Apx 10).

Additionally, Gray would summarize the actions by Howard County in a complaint in federal court:

> 53. On December 14, 1994, a meeting was held with Defendants Paul Johnson, County Solicitor, Barbara Cook and several citizens who had been instrumental in placing 202(g) on the ballot and securing its adoption by the voters. At the meeting Defendants Johnson and Cook, in order to confuse those in attendance, stated that to fully implement §202(g) would violate the due process rights of individual property owners who requested a zoning map or regulation amendment. This was clearly pre-textual because the Office of Law had an opinion of the Maryland Attorney General's Office expressing in unqualified terms that the Charter provisions §202(g) was constitutional. Moreover, if the Office of Law had felt that this provision was legally infirm, they failed in their duty, clearly established under Maryland Jurisprudence, to request a declaratory judgment from the Maryland Courts prior to placement of the text of the referendum provision on the ballot in November of 1994. This was not done because based on the opinion of the Maryland Attorney General's Office, decision of the Maryland Courts would likely have upheld Section 202(g) as constitutional and in accord with the Supreme Court's decision in *City of Eastlake v. Forest City Enterprises, Inc.* 426 U.S. 668 (1976).

Kendall, et. al. v. Howard County et. al., Complaint and Demand for Jury Trial, United States District Court for the Northern District of Maryland, Civil No. JFM 09-CV-369,February 17, 2009, http://www.howardcountyissues.org/ComplaintUSDistrictCourt.pdf (last accessed December 9, 2023). Gray's comments are in accord with the relevant case law. The Supreme Court has stated that "'[a] home rule county charter is a local constitution.'" *Haub v. Montgomery Cnty.*, 353 Md. 448, 727 A. 2d 369, 370 (1999) (quoting *Bd. of Election Laws v. Talbot Cnty.*, 316 Md. 332, 341, 558 A.2d 724, 728 (1988)).

These principles of interpretation of the County Charter are also expressed by the Howard County Office of Law:

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 cannons 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. Bo*dt, 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

The Frederick County Council Legislative Procedures Are the Model For Implementing Section 202(g)

Frederick County adopted its county charter in 2014, and thus had Howard County's to help serve as a model. Maryland Association of Counties, County Fact Sheets https://www.mdcounties.org/153/Detailed-County-Information. The procedures in Frederick County for Council approval of Planned Unit Developments (PUD) zoning map amendments have similarities to the major village center redevelopment, including "(1) Consistency with the comprehensive plan; (2) Availability of public facilities; (3) Adequacy of existing and future transportation systems; (4) Compatibility with existing and proposed development; (5) Population change; and (6) The timing of development and facilities." *75-80 Properties v. Rale, Inc.*, 470 Md. 598, 236 A. 3d 545 (2020) n. 15. A memorandum from Frederick County's Senior Assistant County Attorney on "Rezoning Hearing Procedures" is applicable to illustrating the procedures that are contemplated by Howard County's Section 202(g) (Apx 16-19). After holding a quasi-judicial hearing,

> [i]f a majority of the Council Members agree that the criteria have been satisfied and to grant the request, an affirmative vote provides direction to staff to prepare the appropriate documentation for signature. The documentation that results from the Council's decision is categorized as "legislation." If the Council approves the rezoning request, an Ordinance is prepared which operates to change the previously established zoning designation applied to the subject property. If a majority of the Council members are not able to find that the criteria has been satisfied or decide not to approve the request, a resolution is prepared to reflect the non-approval, and the zoning designation remains unchanged....
>
> If the rezoning request is approved, after the Council adopts the Ordinance, the Ordinance is forwarded to the County Executive for approval or veto.

Memo "Rezoning Hearing Procedures," p. 1-2 (Apx 16-17).

The Proposed Carroll Charter Adopted
The General Language of Section 202(g)

As the Court stated in *Atkinson (2018),* another way to interpret the language of the Charter is to compare the provision with that in other counties. Furthermore, using statutes from other jurisdictions is the policy suggested for legislative drafting by the Maryland Department of Legislative Services:

> When using prior introductions, statutes from other states, or other source materials in drafting a bill, consider adapting and improving, rather than simply copying the material. It is likely that the source material, while close to what is needed, will have to be altered and updated. Nonetheless, much time and effort can be saved by refining rather than recreating.

Legislative Drafting Manual 2019, Department of Legislative Services Office of Policy Analysis Annapolis, Maryland, July 2018 p. 28. Perhaps the most contemporaneous interpretation of Section 202(g) came about four years later with the 1998 proposed Carroll County Charter.[3] When reading the proposed charter, similarities with the Howard County Charter in structure and language are readily apparent. This is because Charles Ecker, Howard County Executive shared his thoughts with the Charter Board and language from specific sections of the Howard County Charter were adopted. Carroll County Charter Board Minutes, July 24, 1997, (Apx 13).

The equivalent provision to Section 202(g) was Section 202(h):

> Planning and zoning. Any amendment, restatement or revision to the Carroll County Master Plan, the Carroll county Zoning Regulations or Carroll County Zoning Maps, other than a reclassification map amendment established under the "change and/or mistake" principle set out by the Maryland Court of Appeals, must be adopted by the Council as law.

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[3] This proposed charter referendum was rejected by the voters for the fourth time in three decades. Hare, Mary Gail and Coram, James M., "Carroll voters reject change Charter government, larger commission lose in special ballot," *Baltimore Sun,* May 3, 1998. In 2020, charter government was still an issue in Carroll County. Blackwell, Penelope, "Carroll County commissioners vote down motion to create charter writing committee," *Carroll County Times*, Nov. 6, 2020

Proposed 1998 Carroll County Charter, Section 202(h) (Apx 15). This provision shows that the Carroll drafters understood the meaning of Section 202(g) and were generally supportive of its goals and scope: to require zoning actions to be performed by the Council by law.

The Supreme Court Has Approved Mixed Quasi-Judicial/Legislative Processes For The Denial of a Zoning Request

Similar to many of the procedures in the charter counties, especially in Frederick County, the City of Westminster has considered changes to general development plans in a mixed quasi-judicial and legislative process. The City's Wakefield Valley General Development Plan has many similarities to the Columbia PDP:

> As of 1978, Westminster did not have a Zoning Ordinance. In 1978, the Council approved "[t]he Wakefield Valley/Fenby Farm General Development Plan" for "734.56± acres of land . . . on the western edge of" Westminster, i.e., the Wakefield Valley GDP. The Wakefield Valley GDP consisted of three categories of land use—residential, commercial, and open space —with the "major open space use within the community [to be] a championship golf course."
>
> * * * *
>
> The following year, in 1979, the Council adopted a Zoning Ordinance, now codified as Chapter 164 of the Code of the City of Westminster ("Westminster Code"). Because a variety of plans were in place before the adoption of the Zoning Ordinance—including the Wakefield Valley GDP—the Zoning Ordinance included a section expressly permitting development to occur based on the existing plans already approved by the Council and providing for amendments to those plans using the process described in an identified provision of the Zoning Ordinance. That section—now codified as Westminster Code § 164-133B—provides, in pertinent part:
>
> > All preliminary plans, final plans, revised preliminary or final plans and all development plans of any type which have been approved by the Mayor and Common Council and/or the Commission prior to November 5, 1979, shall continue to be approved and valid after said date, regardless of the zonal classification of the real property as to which such plans pertain, and said real property shall be developed in accordance with the provisions of such plans. Such plans may be amended in accordance with the procedures provided for the amendment of development plans contained in § 164-188J of this chapter.

WV DIA Westminster v. Mayor & Common Council of Westminster, 462 Md. 369, 200 A.3d 334, 337-338 (2019). The Westminster Code has similarities to the criteria which must be considered with the PDP including conformity with the General Plan. *Id.* at 338.

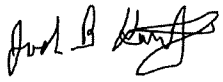
There was a long history of development proposals for the Wakefield Valley GDP. The Common Council held a number of quasi-judicial hearings. At the conclusion of the hearings "because one of the factors was not satisfied, the Council voted to deny the Application, and 'direct[ed] Staff to ... generate an opinion based on [its] deliberations and the considered decisions of the elected officials.'" *Id.* at 346. Subsequently, the Common Council, as with the procedures in the charter counties, adopted an ordinance denying the application and attached the written decision as an exhibit. *Id.* at 347. If Howard County were to model its actions on the procedures from Westminster, Section 202(g) would be properly implemented.

CONCLUSION TO PART II

Section 202(g) was intended to present a distinction for zoning actions. The actions are either under the change/mistake principle as established by the Maryland Court of Appeals (now Supreme Court) or ANY other action. This matter is of course not a change/mistake petition; to the contrary, it is an amendment to the Columbia PDP. It is an amendment to the general plan for the area of Columbia. It may also be considered a map amendment.

The establishment of the boundaries of the Village Center also constitute an amendment, restatement and/or revision to the General Plan. More importantly, the Village Center boundaries will constitute an amendment, restatement and/or revision to the Howard County Zoning Maps. Therefore, Section 202(g) requires that the County Council confirm any approval of the Zoning Board by legislative bill.

Respectfully submitted,



Joel B. Hurewitz
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410-992-3412

April 1, 2026

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

* *

MEMORANDUM OF LAW OF PROTESTANT JOEL B. HUREWITZ

APPENDIX TO PART II

Exhibit H2

IN THE MATTER OF	:	BEFORE
ZONING CASE #412	:	THE BOARD OF COUNTY
THE HOWARD RESEARCH AND	:	COMMISSIONERS
DEVELOPMENT CORPORATION	:	OF
		HOWARD COUNTY
Petitioner	:	
	:	

: : : : : : : : : : :

OPINION AND ORDER

This is an application, under newly adopted Section 17 of the Zoning Regulations, for the reclassification of 13,690 acres of land from various Zoning Districts to a New Town District. A hearing on the above was held on July 13, 1965, at which time we heard from the Petitioner as well as a large number of residents, most of whom spoke in behalf of the granting of the Petition.

Since the plans for Columbia were presented to us last November, we have studied each aspect of the proposal in terms of their long-range effect on Howard County's needs. We feel that in order for our County to grow, local government must provide a favorable climate for the growth of our burgeoning community. We feel that we have begun to meet this need by the adoption of a more flexible and imaginative Zoning Regulations.

We believe that Columbia provides the County with the opportunity and means to utilize this new Zoning concept in such a way as to accomodate our coming growth in a more orderly, logical fashion, avoiding the mistakes and pitfalls which have befallen piecemeal growth in other areas. We shall continue to work with the developers of Columbia to assure that this new Community develops in such a way as to enhance the general welfare of the entire County.

It appears to us that the Plan for Columbia is a good one and that its fulfillment can materially benefit the County in the maintenance of the beauty and stability of our existing Communities through the coming period of growth.

COUNTY COMMISSIONERS OF HOWARD COUNTY

The industrial, institutional, retail, recreational and other facilities which Columbia will provide should add to the well being of the entire County. In the encouragement of well balanced, high quality, and comprehensive new communities such as Columbia, we mean to positively demonstrate our desire to see the County develop the best possible environment for all of its citizens.

In studying the Petition, we have considered the possibility of granting only a portion of the area sought to be rezoned. We have rejected this course of action, because we feel that Columbia is an entity.

We intend, then, to grant the rezoning in its entirety in order to give maximum assurance to the developers and the public of our intention to do all we can to see the project succeeds.

From the evidence adduced at the hearing we find:

a. That the Petition complies with Section 17.021 of the Zoning Regulations.

b. That the proposed development, "Columbia", constitutes a New Town, meeting the requirements of Section 17.01 of the Zoning Regulations.

c. That a New Town District should be located at the proposed site.

d. That the Preliminary Development Plan constitutes a general land use plan for the area covered, thereby designed to meet the objectives set forth in Sections 1 and 2 of this Ordinance.

It is, therefore, this 10th day of August, 1965, by the Board of County Commissioners of Howard County; ORDERED that the Petition of The Howard Research and Development Corporation in Zoning Case #412 to reclassify from present Zoning classification 13,690.118 acres, more or less, in the Second, Fifth and Sixth Election Districts to a New Town (NT) Zoning District [illegible]

COUNTY COMMISSIONERS OF HOWARD COUNTY

and the same is, hereby GRANTED.

THE BOARD OF COUNTY COMMISSIONERS
OF HOWARD COUNTY

CHARLES E. MILLER, Chairman

J. HUBERT BLACK, Member

DAVID W. FORCE, Member

COUNTY
COMMISSIONERS
OF
HOWARD COUNTY

RECEIVED

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HOWARD COUNTY
PLANNING COMMISSION

Petitioner is seeking to redevelop approximately 14.65 acres of the HRVC as shown in detail on the Petitioner's DCP. This redevelopment will result in a total of approximately 105,100 square feet of retail uses and 230 rental apartments. The rental apartments will be located in the proposed 4 story mixed-use residential building. The mixed-use building is proposed to be constructed on the current parking lot at the corner of Freetown Road and Cedar Lane. It will contain approximately 10,365 SF of ground floor retail.

b. Quasi-Judicial Hearing and the Standard of Proof

The Petitioner bears the burden of proving by a preponderance of the evidence that the Petition meets the specific criteria that was legislatively established by CB 29-09 and codified in HCRZ Sec. 125.0.J.5.a(1) through (3). Specifically, the questions in this case are limited to 3 questions: does the Petition comply with (i) Sec. 125.0.B.3 of the HCZR[4]; (ii) the specific definition for a New Town Village Center, and (iii) the ten criteria provided in Sec. 125.0.J.4.a.(8).

The preponderance of the evidence standard is the lowest burden of proof under the law. The Petitioner is required to establish that it is more likely than not (i.e. 51%) that the criteria has been satisfied. The Maryland Civil Pattern Jury Instruction for the preponderance of the evidence standard is instructive on this point:

> In order to prove something by a preponderance of the evidence, **a party must prove that it is more likely so than not so**. In other words, a preponderance of

[4] HCZR Sec. 125.0.B.3 provides the guides and standards for the creation of NT districts, not amendments to an existing NT district. Since the HRVC is already a part of an approved NT district, the litany of the guides and standards provided in Sec. 125.0.B.3 are inapplicable to this Petition. The ZB has clarified this point in previous cases that the only question presented by Sec. 125.0.B.3 in existing NT districts is whether the revised "PDP constitutes a general land use plan for the area covered thereby, designed to meet the objectives set forth in these regulations." Wilde Lake Business Trust, ZB Case No. 1096M (D&O July 9, 2012) ("Wilde Lake D&O") at 23-24; Orchard Development Corp., et al., ZB Case No. 1121M (D&O June 25, 2018) ("Long Reach D&O") at 7.

neighborhood." Opponents who urge denial of the Petition on such basis are encouraging an illegal interpretation of the objective criteria.

Opposition's argument to expand the criteria in this case would provide the ZB with illegal discretion making the ordinance itself illegal and unconstitutional. A basic principle of statutory construction is to construe an ordinance so as to render it constitutional. *See, e.g., Higgins v. City of Baltimore*, 206 Md. 89, 98, 110 A.2d 503, 508 (1954).

II. The Petitioner has met the Approval Criteria.

Petitioner's case, presented by Greg Reed, Petitioner's Vice President of Development, Michael Worksoky, Petitioner's traffic and parking expert, and Matthew Fitzsimmons, Petitioner's land planner and architectural expert, established by a preponderance of the evidence that the proposed redevelopment shown in detail on Petitioner's DCP meets the approval criteria. Below is a detailed overview demonstrating how Petitioner has satisfied the criteria at issue.

a. <u>The PDP as Amended Constitutes a General Land Use Plan for the Area Covered Thereby, Designed to Meet the Objectives Set Forth in these Regulations.</u>

Petitioner presented substantial evidence upon which the Board can find that the Preliminary Development Plan does in fact constitute a general land use plan for the area covered thereby, designed to meet the objectives set forth in the HCZR. Consistent with the approvals for the proposed Major Village Center Redevelopments in Wilde Lake and Long Reach, the preservation and promotion of the community's health, safety and welfare by redeveloping the HRVC in accordance with CB 29-09 and PlanHoward 2030, the instant proposal seeks to provide future growth and development in a way to represent the most beneficial and convenient relationships among the residential, non-residential and public areas within the this area for such uses under Sec. 100.A of the HCZR.

- Excerpts of the 1965 Memorandum and Order for Columbia – Opp. Ex. 10; Minutes from Planning Board Case No. 243 in 1989 – Opp. Ex. 16; Minutes from Planning Board Case No. 164 in 1984 –Opp. Ex. 27; A letter from Chris Alleva to the former Director of the Department of Planning and Zoning ("DPZ") regarding Grandfather's Nursey – Opp. Ex. 30; New York Times Articles regarding Housing Density and Covid-19 – Opp. Exs. 42, 43; Slide Asking What Would Jim Rouse Do – Opp. Ex. 49.

As discussed above, the current HCZR upon enactment are the sole zoning regulations for Howard County. Sec. 100.0.E.1. Previous regulations and policies regarding NT Village Centers are neither relevant nor applicable to this case. The only applicable criteria are those set by the Council in CB 29-09 and codified in Sec. 125.0.J. There is no probative value to any of these exhibits other than to support the Opposition's policy arguments that Village Centers should not include residential uses. As explained above, this policy decision is not an appropriate inquiry for this ZB.

Also of importance is the fact as admitted to by Mr. Alleva the approval of the requested PDP amendment would not result in a change in the Land Use Chart or Map on the PDP. It only amends the Density Chart on the PDP. This is made clear in HCZR Sec. 125.0.J.1.d. ("Any Major Village Center mixed-use Redevelopment shall be considered a 'Commercial' use …"). Additionally, the proposed HRVC redevelopment does not result in a net loss of open space. This is because the HRVC does not currently contain any credited open space – nor is any credited open space being proposed to be added or deleted for the project. The term "Open Space" within the context of HCZR Sec. 125 is not a generic term for any areas that landscaped or green. Open Space is a defined term and shown on Sheet 4 of FDP-205-A-2, which is the Final Development Plan for the current HRVC. Opposition's Exhibit 15. Credited open space, will also be shown on a site development plan should this redevelopment move forward. With no credited open space currently on the HRVC, there will not and cannot be a net reduction of open space.

B. The Zoning Board is an administrative agency acting in a quasi-judicial capacity requiring, at the very least, a reasonable appearance of impartiality.

Although under current Howard County Law, the elected members of the Howard County Council are also tasked to sit as the members of the Zoning Board, the roles of the two bodies are separate and distinct. The fact that the same people serve in both roles cannot negate the very different responsibilities provided to each body. The law could just as easily prescribe that the Zoning Board not be comprised of the members of the County Council. The principle of law espoused by Petitioner that the Zoning Board was obligated to ensure a reasonable appearance of impartiality would not change.

The Howard County Council is the County's legislative body that creates laws including zoning regulations and establishes the zoning districts through comprehensive zoning. In this legislative arena, political advocacy, personal motivations, bias, and *ex parte* communications are fair game. The Court is not concerned "with whatever may have motivated the legislative body or other governmental actor." *Kenwood Gardens Condominiums, Inc.*, 449 Md. at 341, 144 A.3d at 665. And whereas County Council members enjoy free reign to work on behalf of their constituents in the legislative arena, their roles and responsibilities change when they put on the hat of a Zoning Board member. As members of an administrative decision-making body, Zoning Board members cannot be so invested in the result of the case that a reasonable appearance of impartiality cannot be assured.

The Court's findings in *Kenwood Gardens* are instructive on this point. In *Kenwood Gardens*, the appellant sought to invalidate a resolution of the Baltimore County Council approving a planned unit development. *Id.* at 339, 144 A.3d at 663.[5] And sought to disqualify a

[5] Unlike in Howard County, the Baltimore County planned unit development process requires the Baltimore County Council to first approve the development through a resolution. *Kenwood*

THE SUN

VOTERS' GUIDE 1994

HOWARD COUNTY CHARTER QUESTIONS

VOTE FOR or AGAINST

Questions A, B and C are amendments to the Howard County Charter. Proposed changes to the Charter must be submitted to the voters for adoption or rejection. Questions A and C result from resolutions adopted by the County Council in 1994. Question B was proposed by a 1994 petition of a sufficient number of Howard County voters' signatures.

QUESTION A: To require appointment be made on the basis of merit.

BALLOT TITLE: To provide that the appointments to permanent positions in the classified system be made on the basis of merit, as provided by law, and to eliminate the requirement that the appointments be made from the highest ten eligibles certified on the basis of examination.

PRESENT PROCEDURE: The Charter currently requires that county classified system (civil service) appointments be made from the ten highest eligibles certified on the basis of examination.

PROPOSED CHANGE: The Charter amendment would require that county classified system (civil service) appointments be made on the basis of merit, as provided by law.

A VOTE FOR MEANS: County classified system appointments will be made on the basis of merit, as provided by law.

A VOTE AGAINST MEANS: The Charter will continue to require that county classified system appointments be made from the ten highest eligibles certified on the basis of examination.

QUESTION B: To provide that certain zoning plans, regulations, and maps be adopted as council bills.

BALLOT TITLE: To provide that any amendment, restatement or revision to the General Plan, the Zoning Regulations, or 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 Council by original bill in accordance with the legislative procedure set forth in Section 209 of the 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.

PRESENT PROCEDURE: As provided by law, the elected County Council adopts the General (Master) Plan by resolution and is required to revise it on a regular basis. The Zoning Board is composed of the County Council members and acts as a quasi-judicial agency on cases involving both "piecemeal" and comprehensive zoning plans, including map amendments and changes to the zoning regulations. There is no limit on the number of public hearings, work sessions or time for deliberation of the Board to permit full public participation in the process. No special interest, business, developer, etc., may contact individual Board members on the topics at issue during that period. All testimony must be matters of public record.

PROPOSED CHANGE: The amendment would add language to the Charter with specific reference to certain county planning and zoning functions. All except the "piecemeal" zoning cases (subject to the "change or mistake" principle) would be introduced as original bills in the County Council primarily on the recommendation of the County Executive's office. The Council would then have up to 65 days — or under certain circumstances no more than 95 days — to pass the bills or they would fail. Citizen participation in hearings would be confined to this period. The bills passed would then be subject to executive veto and referendum.

A VOTE FOR MEANS: The current process would be replaced. Bills passed by the County Council would be subject to executive veto and referendum.

A VOTE AGAINST MEANS: Retaining the present procedure as provided by the Howard County Code.

QUESTION C: To allow cancellation of certain legislative sessions.

BALLOT TITLE: To provide that the County Council will not meet in legislative session in August, except for emergency sessions or sessions called by resolution, and to allow the County Council to cancel by an affirmative vote of two-thirds of its members any regularly scheduled legislative session.

PRESENT PROCEDURE: The Charter requires the Council to meet in August in legislative session unless two-thirds of the Council vote at the previous session to cancel the August session. The Charter is silent on the possibility that the Council might cancel any other regularly scheduled legislative session.

PROPOSED CHANGE: The amendment would provide that the Council not meet in legislative session in August except for emergency sessions or sessions called by resolution. It also provides a mechanism whereby the Council could cancel any other regularly scheduled legislative session by a two-thirds Council vote.

A VOTE FOR MEANS: The Council would no longer meet in legislative session in August except for emergency sessions or sessions called by resolution, and that the Council may cancel any other regularly scheduled legislative session by a two-thirds Council vote.

A VOTE AGAINST MEANS: The present procedure would continue to be required by the Charter.

HOWARD COUNTY

VOTE FOR OR AGAINST

Questions A, B and C are amendments to the Howard County Charter. Proposed changes to the Charter must be submitted to the voters for adoption or rejection. Questions A and C result from resolutions adopted by the County Council in 1994. Question B was proposed by a 1994 petition of a sufficient number of Howard County voters' signatures.

Question A — To require appointments be made on the basis of merit

To provide that the appointments to permanent positions in the classified system be made on the basis of merit, as provided by law, and to eliminate the requirement that the appointments be made from the ten highest eligibles certified on the basis of examination.

Present Procedure: The Charter currently requires that county classified system (civil service) appointments be made from the ten highest eligibles certified on the basis of examination.

Proposed Change: The Charter amendment would require that county classified system (civil service) appointments be made on the basis of merit, as provided by law.

A vote FOR means: County classified system appointments will be made on the basis of merit, as provided by law.

A vote AGAINST means: The Charter will continue to require that county classified system appointments be made from the ten highest eligibles certified on the basis of examination.

Question B — To provide that certain zoning plans, regulations, and maps be adopted as council bills

To provide that any amendment, restatement or revision to the General Plan, the Zoning Regulations, or 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 Council by original bill in accordance with the legislative procedure set forth in Section 209 of the 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.

Present Procedure: As provided by law, the elected County Council adopts the General (Master) Plan by resolution and is required to revise it on a regular basis. The Zoning Board is composed of the County Council members and acts as a quasi-judicial agency on cases involving both "piecemeal" and comprehensive zoning plans, including map amendments and changes to the zoning regulations. There is no limit on the number of public hearings, worksessions or time for deliberation of the Board to permit full public participation in the process. No special interest, business, developer, etc., may contact individual Board members on the topics at issue during that period. All testimony must be matters of public record.

Proposed Change: The amendment would add language to the Charter with specific reference to certain county planning and zoning functions. All except the "piecemeal" zoning cases (subject to the "change or mistake" principle) would be introduced as original bills in the County Council primarily on the recommendation of the County Executive's office. The Council would then have up to 65 days - or under certain circumstances, no more than 95 days - to pass the bills or they would fail. Citizen participation in hearings would be confined to this period. The bills passed would then be subject to executive veto and referendum.

A vote FOR means: The current process would be replaced. Bills passed by the County Council would be subject to executive veto and referendum.

A vote AGAINST means: Retaining the present procedure as provided by the Howard County Code.

Question C — To allow cancellation of certain legislative sessions

To provide that the County Council will not meet in legislative session in August, except for emergency sessions or sessions called by resolution, and to allow the County Council to cancel by an affirmative vote of 2/3 of its members any regularly scheduled legislative session.

Present Procedure: The Charter requires the Council to meet in August in legislative session unless 2/3 of the Council vote at the previous session to cancel the August session. The Charter is silent on the possibility that the Council might cancel any other regularly scheduled legislative session.

Proposed Change: The amendment would provide that the Council not meet in legislative session in August except for emergency sessions or sessions called by resolution. It also provides a mechanism whereby the Council could cancel any other regularly scheduled legislative session by a 2/3 Council vote.

A vote FOR means: The Council would no longer meet in legislative session in August except for emergency sessions or sessions called by resolution, and that the Council may cancel any other regularly scheduled legislative session by a 2/3 Council vote.

A vote AGAINST means: The present procedure would continue to be required by the Charter.

3/3/2003

Dear Council members:

I want to take this opportunity to strongly urge you to not reconfirm Barbara Cook as County Solicitor. As an attorney and planner who has represented individuals and communities in land use matters and as a civic activist for almost 15 years, I believe that this is one of the most important votes you will cast as a council member. My tenure as a civic activist and attorney in land use matters corresponds closely with Ms. Cook's years as county solicitor. During this time I have dealt with Ms. Cook and the Office of Law extensively. I am hard pressed to think of a single instance from the mundane (such as scheduling matters) to the complex (such as the analysis of law) where Ms. Cook and/or the Office of Law has acted with integrity. The Office is dishonest. It does not work for the people of this county, but instead uses all of the resources at its disposal to overwhelm and crush county residents and county employees who have the audacity to demand that the county follow its rules of law. This dishonestly is not limited to county residents and employees but is pervasive in the advice given by the Office to council members in the enactment of legislation, administrative boards in carrying out their functions, and task forces and other groups to which the Office provides advice.

I had hoped to meet with you last week to provide you with detailed materials illustrating the above. However, since that did not happen, I am sending this e-mail. I also left a set of files with Gloria this morning which when read in conjunction with the material outlined below provides examples of the Office of Law's dishonesty. The examples are a hodge poge of things from my files and the files of other attorneys and citizens. The materials are all part of the public record and provide but a glimpse of how the Office of Law under Barbara Cook operates. (Files, documents, and video and audiotapes providing much more extensive evidence of the Office of Law's practices of deception is available. The materials are extensive and in some cases would require transcription. If you wish to see and hear them that can be arranged, but it will take time—time to secure and time to review them.) I realize that your schedules are very busy but I encourage you to review these materials.

I suggest that you review the materials provided to you today in the following order.

1. File 1.: the Clark Ahler Memorandum in the Andrea Quinto case. It is the first document in the Quinto file. In the Memo Mr. Alher describes the Office of Law as being intellectually dishonest and positing and assault on the integrity of the court. (The second document simply summarizes her case.)

2. File 2.: my response to a formal complaint filed against my Bar license by Joe Rutter, apparently on behalf of the county. I note this was filed about three weeks after I found that Joe had surreptitiously changed the language in the draft 2000 General Plan then before the Council for approval to allow almost unlimited expansion of water and sewer lines into the western portion of the county. My affidavit, also included in that file, was one of the things Joe was complaining about to Bar Counsel. The affidavit was filed in a 42 USC civil right action brought by a former county employee. The affidavit by Alice Anne Wetzel, another former county employee, is also in that file. (This action was later dismissed after the county employee ran out of money to pursue it.) The affidavits provide a glimpse of how the Office of Law operates and what it sanctions.

I also note that many of the multitude of pages sent by Rutter to Bar Counsel should only have been available through the Office of Law. I guess that is what happens when one dared to point out DPZ's/Office of Law's misrepresentations: they go after your livelihood! Bar Council's response reminding Rutter that there is such a thing as the 1st Amendment is on the inside cover of the file.

3. The attachment of this e-mail providing examples where Howard County, through DPZ and the Office of Law, has facilitated what was effectively a "taking" of private property for the use of third party developers. (Also see the Groves file). I believe these are 42 UCS 1983 civil rights violations.

4. The materials in the files folder labeled referendum. These materials are just a sampling of what I believe are repeated violations of the right of referendum, particularly Question B, established in the Charter.

SHORT HISTORY OF QUESTION B

---Fall 1988: Bill 66: Council changed subdivision regulations to require that changes to GP be passed resolution. This was in direct contravention to Maryland Court of Appeals case, which had been handed down a month earlier. Inlet Associates v. Assateague House.

--1988 to passage of Question B, 1994: County took position that subdivision, roads, water and sewer extension, and zoning had to be consistent with General Plan. Developer had to get GP changed to do ay thing other than that on GP. County took position that State Highways could not even study alternative road alignments unless they were on GP.

--See: the 1991 County Solicitor's opinion on GrayRock Drive. It shows that at that time it was the county's position that roads had to be built in accordance with the General Plan. The Council had to change the General Plan by resolution (not subject to referendum) if a developer wanted to build a collector or higher road not on the General Plan.

--1990 GP passed by council by resolution. Language of GP explicitly makes all county plans, such as water and sewer plan part of GP

--1990-1993: County citizens have extensive debate and argue that 1990 GP and comprehensive zoning should be subject to referendum. Citizens collect signatures for referendum on comprehensive zoning. Signatures thrown out by Bd of Elections because zoning is not subject to referendum.

--1993-1995: Citizens sue county arguing that 1990 General Plan and comprehensive zoning had to have been passed by bill, subject to referendum. In arguing Memoranda, Office of Law changes tune. Now argues that GP has no impact, that road decisions are made by DPZ not the Council, etc. Cathell in oral arguments repeatedly stated from bench that citizens were correct and GP and zoning needed to be tossed, Bell stated that overturning county would cause "economic chaos." Court of Special Appeals, in unreported opinion, did not rule on GP issue, but said zoning method was acceptable.

--1993-94: Citizen approach Office of Law for help on doing petition drive to change charter to specifically state that GP and compreh. zoning must be passed by bill. Johnson (Office of Law) states residents have no right to place charter amendments on ballot by petition. Says Maryland Constitution does not apply in Howard County. See affidavits of Peter Oswald.

--1993-94: With help of former county solicitor and administrative judge, and number of attorneys, charter language drafted specifically intended to make the GP and all zoning actions except change or mistake cases subject to referendum.

--While petitions being gathered Office of Law disseminates info sheet to public and press, which misrepresents what proposed amendment, says.

--Throughout petition gathering and up through election DPZ/Office of Law and development community warn of dire consequences of passing amendment.

--November 1994: Amendment passed by 67% of voters.

--December 1994: Office of Law drafts regulations to implement Question B. Regulations effectively gut Question B. Cook acknowledges that she is not implementing Charter amendment. Says she thinks there is a due process problem. This due process issue had been specifically

addressed by the US Supreme Court in the mid 1970's in a case called Eastlake. The court found no problem. Under Maryland law, Cook was required to take the proposed charter amendment to the Court of Appeals prior to the election if she thought there was a problem. She did not do this.

--Mid 1990's to now: Office of Law instructed the Zoning Board to decide all "piecemeal" zoning cases other than "change or mistake"cases, not by bill as required by Question B but administratively, not subject to referendum. The Office also systematically drafted and the council passed ordinances designed to change county processes so that the right of referendum was avoided. The Office of Law and DPZ also just changed practices without any notification of the council. Examples: Ordinance allowed metropolitan inclusion to be done administratively, instead of by bill. Projects and properties were bought into the public sewerage system by developer agreement, instead of by bill. Office of Law changed the language in agricultural preservation easements without notifying the council to make them less restrictive and permanent; DPZ instituted its own road guidelines, which replaced the council approved road regulations; DPZ implemented its own stormwater management guidelines, which replaced the council's regulations. The Office of Law refused to implement the specific language of the 1990 GP which specifically said that it encompassed all Master Plans into the General Plan and continued to pass such documents such as the Master Plan for Water and Sewer and the county Parks Plan by resolution. By undertaking these actions the Office of Law has shifted almost the entire legislative decision apparatus to the executive branch and away from the council.

--The Office of Law has repeatedly misinformed the council and task forces established to deal with issues including Question B of the legal relationship between the charter and Question B. In particular, it tells people that Question B must be changed in the Charter since the Charter does not conform to the county regulations. This turns law on its head. The Charter is the local Constitution. Council actions must conform to the Charter, not visa versa. Similarly, the Office instructs that Question B is probably illegal under the due process clause of the US Constitution. As stated above, the Supreme Court held in Eastlake that allowing the right of referendum over piecemeal, administrative zoning decisions was not a violation of due process as Ms Cook claims. Also, the Supreme Court in Meyers v. Grant established that the right to exercise referendum power given to a people through a charter or other governing statute is a fundamental 1st Amendment right

I could go on almost indefinitely with examples where I believe Ms. Cook has violated Question B, but I think the above should suffice.

To summarize, it has been my experience with the Office of Law over the past 14 years that it is the practice of that Office to 1) facilitate the non-implementation of county ordinance; 2) circumvent the Council through the implementation of new county policy and practices through administration fiat; 3) misrepresent law, the status and nature of projects, policies, practices, personnel matters, etc., to the public, the Council, the courts, and any one else necessary to carry out their agenda; 4) violate the People's right of referendum; 5) effectively "take" private property for developers, and 6) engage in what ever deceit and deception necessary to carry out their goals. Now is the time to put a stop to these practices.

I hope this e-mail and the materials provided have given you the needed glimpse of the egregious nature of the Office of Law's activities so you understand the importance of not reconfirming Barbara Cook as county solicitor. I would be glad to talk with you further regarding this matter.

Susan Gray

CARROLL COUNTY CHARTER BOARD

Minutes

July 24, 1997

Call to Order:
Chairman Amedori called to order the Carroll County Charter Board at 7:03 p.m., in Room 157-59, Carroll Community College, Westminster, Maryland.

Present:
Carmen Amedori, Christopher Nevin, Ragen Cherney, Ann Ballard, Lynn Pipher, Neal Powell, Romeo Valianti, and Roger Wolfe. Also present: The Honorable Charles Ecker, Howard County Executive.

Absent:
Jack Gullo, Jr.

Previous Minutes:
Minutes of the previous meeting of July 10, 1997 were read. Mr. Nevin moved the acceptance of both meeting minutes. Mr. Wolfe seconded. Motion passed with a unanimous vote.

Mr. Ecker's Remarks:
Mr. Ecker is a strong believer in home rule. In Maryland there are 10 counties with commissioner form of government, 13 counties with home rule, of those 13, 8 counties have charter government and of those 6 have an elected county executive and county council. Talbot and Wicomico Counties appoint their county executive/administrator. There needs to be a separation of powers, it is good to have an elected leader. With a charter Carroll will have a state transfer of legislative matters on local issues to the county. This allows for more control by the citizens of the county as well as enacting county legislation in a more timely manner. With a charter with an elected executive Carroll will have more effective leadership. Not management by committee like the way commissioner form of government works. We will have a hands on day to day county leader responsible to the citizens of Carroll County. One disadvantage is that charter government will cost more money, we can't really say. There will be support staff for the council and the executive, however, it should be noted that

many of these positions already exist in Carroll County government. With a charter Carroll would not need any additional government personnel other than those already mentioned as support staff for the council and executive. There might be an additional need in the county attorney's office for personnel. Carroll can state the way Howard County does that the county attorney's office works for both the council and the executive or the charter could allow for additional personnel in the county attorney's office to work for the executive and personnel to work for the council.

The Howard County Council until 1986 was elected county-wide, but after a referendum by the voters the council has been elected by district since. Howard County has a limit of two terms for the executive and fairly recently enacted three term limits for council members. After each decennial census the county deals with re-districting. Mr. Ecker urged the Charter Board to place a re-districting plan in the charter. In Howard County a commission of three Democrats and three Republicans are appointed to prepare and submit a re-districting plan.

In Howard County once the budget is passed by the council the executive cannot veto the budget bill. Once it is sent to the council, however, they cannot increase the budget sent by the executive. The executive can veto any other legislation passed by the council. The council can over-ride the veto by the vote of four of the five council members. In Howard County there is a Chief Administrative Officer similar to the position of Chief of Staff to the County Commissioners which is paid $85,000 per year in Howard County. When the executive is out of the county they are the acting executive. The county council is paid between $30,000 to $33,000 per year and there is a salary review commission for both the executive and council salaries. There are length of residency requirements for the executive and the council.

In Howard County the council sits also as the County Liquor Board and as the County Planning and Zoning Commission.

Howard County's property tax rate is $2.59/$100.00, and they have a metro fire tax of $0.23/$100.00. Their piggy back tax is 50% and they also have a trash tax. The County also has a paid county police department, county paid fire services with some volunteer services, and has paid emergency services.

There is a charter review commission appointed periodically and they place changes to the charter on the ballot for referendum. Mr. Ecker stated that he see's charter government as a cost benefit. The citizens get better and more services. In his term of office Mr. Ecker stated that the size of the executive's staff and the council's staff has decreased. Under questioning Mr. Ecker stated that the executive in Howard County has no veto power with zoning issues, that the council appoints a Board of Zoning Appeals which can re-hear the entire case from the Zoning Commission, and that when the council acts as either the Zoning Commission or as the Liquor Board they are paid additionally per meeting.

regular election. The Council shall appoint one additional member to the Commission, who may be from any political party, without reference to any list submitted by a central committee. The Commission shall, at its first meeting, select one of its members to serve as chairperson. No person who holds any elected public office shall be eligible for appointment to the Commission.

By November 15 of the year prior to the year in which redistricting is to be effective, the Commission shall prepare a plan of Council Districts and shall present that plan, together with a report explaining it, to the Council. The proposed districts shall be compact, contiguous, substantially equal in population and have a common interest as a result of geography or existing political boundaries. Within thirty days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within ninety days following presentation of the Commission's plan no other law reestablishing the boundaries of the Council Districts has been enacted, then the plan as submitted shall be adopted by the Council. Any ordinance establishing Council Districts shall be exempt from referendum.

(h) Planning and zoning. Any amendment, restatement or revision to the Carroll County Master Plan, the Carroll County Zoning Regulations or Carroll County Zoning Maps, other than a reclassification map amendment established under the "change and/or mistake" principle set out by the Maryland Court of Appeals, must be adopted by the Council as law.

SECTION 203. Officers.

(a) Presiding officer. The Council at its first meeting in December of each year shall elect from its membership a President and Vice President. The President, or in his or her absence the Vice President, shall preside at all meetings. On all questions before the Council, the President and Vice President shall have and may exercise the vote to which each is entitled as a Council member.

(b) Other officers and duties. The Council shall employ a Secretary, who shall keep minutes of all meetings and maintain its Journal. There may be such other officers of the Council as may be provided in its Rules of Procedure. Officers of the Council shall perform duties and functions not inconsistent with those assigned to the legislative branch by this Charter or the Rules of Procedure of the Council.

SECTION 204. Actions by Council as Whole.

In all of its legislative functions and deliberations, the Council shall act as a body and has no power to delegate any of its functions and duties to a smaller number of its members than the whole.

SECTION 205. Enumerated powers not to be exclusive.

The enumeration of powers in this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein, implied thereby, or appropriate to the exercise thereof, the Council shall have and may exercise all legislative powers which, under the Constitution and laws of this State, it would be competent for this Charter specifically to enumerate.

FREDERICK COUNTY GOVERNMENT
OFFICE OF THE COUNTY ATTORNEY

Jan H. Gardner
County Executive

John S. Mathias, County Attorney
Michael J. Chomel, Senior Assistant County Attorney
Linda B. Thall, Senior Assistant County Attorney
Wendy S. Kearney, Senior Assistant County Attorney
Kathy L. Mitchell, Assistant County Attorney
Bryon C. Black, Assistant County Attorney

MEMO

To: County Council Members

From: Wendy S. Kearney, Sr. Asst. County Attorney

Date: January 30, 2019

Re: **Rezoning Hearing Procedures**

I. Purpose:

The purpose of this memorandum is to provide information and guidance to Council Members about the law governing rezoning hearings and decisions and to provide the adopted "County Council Rezoning Public Hearing Procedures."

II. General Discussion:

1. Quasi- Judicial Decisions

Decisions made on individual rezoning applications are categorized as "quasi-judicial" decisions.

The Council, as the decision maker, will be provided the statutory framework from the County Code that sets forth the criteria to be applied by the Council. The application and record must contain sufficient factual information to establish that those criteria have been met for the Council to make the required findings to support the decision to approve the rezoning request.

The applicant bears the burden to prove all the elements needed to satisfy the criteria. If the applicant meets the burden of proof, the Council may, but is not required to approve the rezoning request.

If a majority of the Council Members agree that the criteria have been satisfied and to grant the request, an affirmative vote provides direction to staff to prepare the appropriate documentation for signature. The documentation that results from the Council's decision is categorized as "legislation." If the Council approves the rezoning request, an Ordinance is prepared which operates to change the previously established zoning designation applied to the subject property. If a majority of the Council members are not able to find that the criteria has been satisfied or

decide not to approve the request, a Resolution is prepared to reflect the non- approval, and the zoning designation remains unchanged.

The rezoning application is deemed denied if not approved within 90 days of the conclusion of the Council's public hearing.

If the rezoning request is approved, after the Council adopts the Ordinance, the Ordinance is forwarded to the County Executive for approval or veto.

2. The Record:

All quasi-judicial[1] decisions must be based upon the information contained in the administrative "record." Typically the "record" is opened with the application, to which the staff report and agency comments are added. As the application moves through the process, the Planning Commission recommendation is added to the record, along with all documents submitted by the public or others as part of the Planning Commission hearing.

The record remains open when the County Council Hearing commences, for the receipt of additional documents and comments. At the conclusion of the Council hearing(s) the Council should close the record and no additional information can be considered or added.

All Council Members must base their decision(s) on the information contained in the "record" and may not consider any information "outside" of the record.

If a Council Member determines that the information presented to the Council and included in the record is not sufficient to make each of the affirmative finding(s) required by the applicable code provisions, the Council Member would not be able to vote to approve the application.

3. Decision Maker's Role:

In making a quasi-judicial decision, a Council Member's role is like that of a Judge. The application and pertinent information is presented to the Council along with the criteria to be applied. The decision must be based only on the information provided in the "record." Council members may ask questions of presenters during the hearing to obtain additional information. As

[1] Quasi-judicial decision include rezonings (piecemeal and floating zones (PUD and MXD)), and Historic Property and Historic District Designations.

a decision maker, a Council Member may **not** engage in their own research or base their decision on information outside of the record.

If a Council Member has questions or can identify items that they would like to review and have included in the record, during the public hearing the Council Member may ask the Staff members who presented the Staff Report to provide that information, have that information added into the record and made available to all participants prior to the closing of the record.[2]

4. "Off the Record" and Ex-Parte Communications.

As indicated above, it is crucial that any decision on an application be based solely upon the information contained in the record.

Therefore, communications with anyone about any matter related to a pending application other than during the public hearing, should be avoided for several reasons. Not only will it be difficult to segregate "non-record" information from information in the record when making the decision, but it also creates the appearance of impropriety for a decision maker to have private discussions with the applicant or someone in opposition to an application. Such communications may also provide the basis for a legal challenge of the Council's decision.

In addition, the Ethics provisions contained in the Annotated Code of Md., General Provisions Art., §5-857 requires, among other things, disclosure of all communications regarding a pending application.[3]

III. Hearing Procedures:

Prior to making a decision on an application, the Council is required to hold a public hearing during which all parties must be treated fairly and afforded due process rights, including (but not limited to) the right to present testimony and to cross examine witnesses.

The Court of Appeals recently provided guidance on the amount of cross-examination an agency must allow in the context of zoning matters. The Court indicated that the reasonable cross-

[2] Depending upon the scope of the additional information to be added to the record, an additional hearing may be warranted.

[3] General Provisions Art. § 5-857 applies to Comprehensive and piecemeal rezonings, Water and Sewerage Plan Amendments, Annexations, and Agricultural Preservation applications. It also requires recusal if a contribution was received from the applicant during the pendency of an application.

examination requirements would be satisfied "if one or more representatives of the views of other opponents is permitted full cross-examination. The opponent's right to due process in such context does not mean that every single person present has the right to cross examine." *Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588 (2014).

The Court further explained that "once reasonable cross-examination has occurred, it is the burden of the persons seeking *additional* cross-examination to show that their questions would be meaningfully different, although they *must be given reasonable opportunity to do so." Chesapeake Bay Foundation, Inc.*, Id. (emphasis in original.)

IV. Conclusion:

The Council adopted formal public hearing procedures on February 14, 2017, which are attached.