

IN THE MATTER OF	*	BEFORE THE
	*	HOWARD
THE HOWARD RESEARCH	*	COUNTY
DEVELOPMENT CORPORATION	*	ZONING BOARD
	*	ZB 1133M

EXCEPTIONS OF PROTESTANT JOEL B. HUREWITZ

Protestant Joel B. Hurewitz (“Protestant”) submits, pursuant to Howard County Code § 16.203A(d), these Exceptions to the Report of the Zoning Board Hearing Examiner (“ZBHE”) in ZB 1133M, The Howard Research and Development Corporation.

OBJECTION TO THE SCHEDULING OF THE ZONING BOARD PRESENTATION

Protestant on February 24, 2026, filed three sets of motions:

1. Motion For A Bill of Particulars Regarding the Disclosure of Contributions to Friends of Opel Jones;
2. Motion to Provide the Ownership and Corporate Information required by Howard County Code Section 16.205(c)(1); and
3. Motion to Disqualify Joyce Nichols as Zoning Board Hearing Examiner Until Such Time as Nichols is Lawfully Appointed by the Howard County Council by Resolution,

Motion to Disqualify Nathaniel Forman as Zoning Counsel Until Such Time as Foreman is Lawfully Appointed by the Howard County Council by Resolution,

Motion to Indefinitely Postpone Scheduling of ZB 1133M Until Such Time as Zoning Counsel Nathaniel Foreman is Lawfully Appointed by the Howard County Council by Resolution; and

Motion to Retain Jurisdiction of ZB 1133M Until Such Time as Joyce Nichols is Lawfully Appointed as Zoning Board Hearing Examiner by the Howard County Council by Resolution (collectively “Motions to Disqualify”).

The motions were filed 30 days in advance of the Zoning Board’s Administrative Hearing. Petitioner did not respond to these motions.

On March 25, 2026, the Zoning Board held its Administrative Meeting in this matter. Petitioner's Counsel requested that Protestant first file an entry of appearance before he would reply to Protestant’s motions. As the Administrative Meeting was about to begin, Protestant sent via email an Entry of Appearance to the Petitioner and Board Administrator. Petitioner then replied by emailing only to Protestant a letter regarding the corporate ownership information of HRD Development Management. A minute letter Petitioner's Counsel emailed only to Protestant an Affidavit and Disclosure of Contribution.” At 7:26 PM, the Board Administrator emailed Protestant and Petitioner acknowledging that the entry of appearance was "Received."

The Zoning Board failed to consider any of Protestant’s motions. The Board then voted to send the case to be heard by the ZBHE the next morning at 10:00 am. Afterwards, Protestant and Petitioner’s Counsel engaged in further conversation about the case. Counsel expressed his desire that the matter not be unreasonably delayed. With about 14 hours overnight to determine a plan of how to proceed, Protestant decided that it would be best to not appear before the ZBHE. By sending the matter to the ZBHE, Protestant’s motions were effectively denied, not “abandoned” as stated by the ZBHE. Report page 3. The motions were written to the Zoning

Board not to the ZBHE. However, based on the immediate prior proceedings in the other ZBHE hearings, Protestant would have been compelled by the ZBHE to argue the Motions to Disqualify.

Thus, Protestant chose not to further participate in the matter before the ZBHE and did not even log on to Webex, lest the ZBHE would ask to further participate. Instead, Protestant watched the hearing, which lasted just over one-half hour, on Granicus and did not hear any mention of Protestant's motion. However, when the Report was issued on March 30, 2026, the ZBHE felt compelled to spend nearly one-third of the 19-page Report discussing Protestant's so-called "abandoned" motions. Protestant would have expected the ZBHE to ignore the motions as had the Zoning Board.

Additionally, the facts regarding the "Motion For A Bill of Particulars Regarding the Disclosure of Contributions to Friends of Opel Jones" was substantially identical to the disclosures in ZB 1132M, Columbia Concepts. Therein, the ZBHE determined that the property body for enforcing complaints regarding disclosures of campaign contributions was the Howard County Ethics Commission, not the Zoning Board or ZBHE. The issues regarding the contributions to Friends of Opel Jones remain unresolved.

Having filed motions before the Zoning Board, entered an appearance as requested by Petitioner's Counsel, and having the motions consume approximately six pages in the Report, the Protestant is a Party of Record in this matter. However, even though the Board Administrator acknowledged receipt of the Entry of Appearance, the Board Administrator failed to send the Report to Protestant.

The last day to file Exceptions in this matter is April 28, 2026.

EXCEPTIONS REGARDING PRELIMINARY MOTION

The ZBHE's response to the Motions to Disqualify is largely a cut and paste of the "Petitioner's Opposition To Protestant Joel B. Hurewitz's Motion To Disqualify Hearing Examiner And Zoning Counsel" filed in ZB 1130M, Corridor Square. That the ZBHE made a rote response to the Motions to Disqualify is demonstrated by the inclusion of Corridor Square Petitioner's opposition to a Motion for a Declaratory Ruling:

Second, assuming for argument the Zoning Board does have the authority to void employment contracts without cause, §2.408 of the ZB Rules of Procedure requires Mr. Hurewitz to file a separate action requesting declaratory relief—"Any interested person may petition the Zoning Board to issue a declaratory ruling ..." ("emphasis added"). Further, the petition must be publicly advertised and requires a public hearing. In short, the Rules do not allow Protestant to back-door a request for declaratory ruling in a pending matter.

Report page 7-8 (emphasis omitted in Report). **THERE WAS NO DECLARATORY RULING MOTION IN ZB 1133M.** Therefore, the ZBHE notably did not include it in the recitation of motions on Page 2 and 3 of the Report. Yet, the sloppiness of its inclusion on Pages 7-8 calls into question the veracity of other sections of the Report and the ZBHE's conclusions in law. It fails to accurately fulfill the requirements of the Howard County Code that "The report shall include findings of fact, summaries of arguments and respective positions in the case or theory in support of it, and conclusions of law." Howard County Code § 16.203A.(b)(2).

The ZBHE failed to comment directly on any of the Protestant's cited caselaw, and showed a lack of comprehension of what is a de facto judge and what is a "collateral attack." In fact, the issues of "collateral attack" were flipped on its head. The ZBHE improperly suggests the appropriateness of filing a declaratory ruling with the Circuit Court. This would in fact be a collateral attack on the legality of the appointments. In addition to explaining the de facto officer

doctrine, the cited cases in Protestant's Motion to Disqualify have emphasized the necessity of raising the issue of a defect in the officer's qualifications in the proper proceeding." *Baker v. State*, 833 A.2d 1070, 1084, 377 Md. 567 (2003). The *Baker* Court cited numerous cases of the jurisprudence of attacking the power of a judge and concluded:

the legality of the acts of a de facto judge, or that judge's entitlement to the office, may not be collaterally attacked in a proceeding to which the de facto judge is not a party. *Id.* In this case, we have seen, the petitioner moved to quash or strike both an illegal sentence and the warrant of execution. This is a collateral attack on the petitioner's sentence. It is not a proceeding brought directly to question whether Judge Whitfill was validly holding the office of judge of the Circuit Court for Harford County when he sentenced the petitioner and signed the Warrant of Execution.

Id. at 1086. It is also incorrect that the ZBHE or a judge needs to have a personal issue or bias requiring disqualification. The cited federal cases in Protestant's Motion to Disqualify had no factual issues of personal bias; instead the issues related to issues of constitutional and statutory law regarding the lawfulness of the appointments.

Additionally, while totally ignoring Charter Section 216, the ZBHE improperly relies upon Council Rule 1.015; Rule 1.015(d) states

Other Assistance. The Council may, by resolution or as provided in the County budget, employ such legal, financial, technical or other assistance as it may from time to time deem necessary.

Council Rule 1.015(d) is generally a restatement of Charter Section 216; however, Rule 1.015(d) contains an "or" after "resolution" that is not found in the Charter. By adding the "or," Rule 1.015(d) deviated from the structure of Charter Section 216. As written, Rule 1.015(d) allows employment of assistance (1) if it is provided in the budget or (2) if not provided in the budget, the Council may pass a resolution. There is no provision in Rule 1.015(d) for supplementary appropriations. If the Council were to pass a resolution, and there is no money in the budget, there is no ability to pay for the assistance. This result would be contrary to the plain language of

Charter Section 216. Council Rule 1.015(d) cannot effectively rewrite the superiority, meaning, interpretation, and/or application of Charter Section 216.

The argument that the Board of Appeals Hearing Examiner and Zoning Counsel have never been appointed by Council resolution is not a defense. Rather, it is an admission that the County Council has erred for a very long time. That the position of Board of Appeals Hearing Examiner and the Zoning Counsel have always been treated as personnel matters is a truth. However, it does not make it compliant with the County Charter. The Supreme Court has recognized that the erroneous application of a Charter does not make it correct:

Such a long-standing construction of Ocean City's Charter powers (at least since the adoption of its present Charter in 1965) by the officials charged with its administration is due considerable deference by the courts when an ambiguity exists as to the proper interpretation of the Charter provisions.... **But no custom, however venerable, can nullify the plain requirements of a statute or charter provision or otherwise confer power on a legislative body. ... In other words, the unvarying construction of a charter provision by those charged with its enforcement over a long period of time cannot override the plain meaning of an unambiguous provision or extend it beyond its clear import. ...** While the City Solicitor's interpretation of the Charter provision is entitled to some weight, he, of course, has no greater power to bind the municipality than a private attorney has to bind a client. ...

Inlet Assoc. v. Assateague House Condo., 313 Md. 413, 432-433, 545 A.2d 1296 (1988) (emphasis added) (internal citations omitted). Thus, if the County Solicitor or ZBHE misinterpret, or here just ignore the plain language of the County Charter, they should not be given deference.

Notably, while the Zoning Board Hearing argues that it is a personnel matter, former Board of Appeals Hearing Examiner Katherine Taylor (“Taylor”) believes this conclusion is legally incorrect. In her October 6, 2025 letter to the County Council Taylor wrote:

Also troubling is that the matter was addressed in a closed session under the rationale that it was a “personnel” matter. The Agenda for May 8, 2025, Budget Public Hearing stated: “Determination of Closed Session - Section 3-305(b)(1) to discuss a personnel matter.

The topic is compensation, employment, performance evaluation, and assignment of one or more specific employees.” **This was not a proper basis to close the session. Hearing Examiners are not county employees either under their contracts or under the law.** [Footnote 4 inserted herein] [If this were, in fact, a personnel matter regarding an employee, the law would have required that the affected “employee” be provided (1) a stated and lawful reason for the personnel action, (2) rights under Title 1 of the Howard County Code, and (3) the pay and benefits to which county employees are entitled, including participation in the county’s retirement plan, the payment of the employer’s share of employment taxes and the withholding and remittance of federal and state income taxes]. **The council does not supervise, oversee, or evaluate the hearing examiners.** The only provision within the contract that provides the council with any supervisory or evaluative discretion over the hearing examiner term is the clause that states: “Termination. Hearing Examiner serves at the pleasure of the County Council who, *by a vote of two-thirds of its members*, may terminate this contract in whole or in part.”

Katherine Taylor, Letter to County Council, p. 2-3 (emphasis added) (footnote 3 and 5 omitted).

Charter Section 405(b) states in relevant part

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

(emphasis added). The highlighted provision means that the County Council, or its alternate hat as Zoning Board, cannot “employ or retain any legal counsel” except as provided in the Charter. Legal counsel are normally “hired” or “retained” by a client, and as Taylor stated as independent contractors. An employee/employer relationship is not created. However, under the context of Charter Section 405(b), it is a distinction without a relevant difference. Because the issue is where in the Howard County Charter the authorization for legal assistance other than the County Solicitor may be found. Especially, as it pertains to the ZBHE the only relevant section is Charter Section 216:

The Council may at its discretion, and subject to the provisions in its budget or supplementary appropriation, by resolution **employ such legal**, financial or other

technical advisors as it may from time to time deem necessary for the performance of any of its functions.

(emphasis added). Both Charter Sections 405(b) and 216 use the words “employ” and “legal.”

The words should be given their same meaning.¹ The Supreme Court has explained how to

"interpret statutory provisions that are *in pari materia* (in other words, dealing with the same subject matter) consistently with each other," if possible. [*Wash. Suburban Sanitary Comm'n v. Phillips*, 413 Md. 606, 623, 994 A.2d 411, 421 (2011)] The underlying goal of *in pari materia* is to construe two common schemes of statutes harmoniously to give full effect to each enactment. *Gargliano v. State*, 334 Md. 428, 436, 639 A.2d 675, 679 (1994). Statutes "do not need to have been enacted at the same time, or necessarily refer to each other to be construed *in pari materia*." See *Farmers & Merchants Nat'l Bank v. Schlossberg*, 306 Md. 48, 56, 507 A.2d 172, 176 (1986).

Donlon, v. Montgomery County Public Schools, 460 Md. 62, 188 A.3d 949, 970 (2018). So whether one believes that the ZBHE is an employee or an independent contractor, Charter Section 216 by its clear, plain, and unambiguous language requires a Council resolution. This conclusion is further supported by the language in Charter Section 204 and 206.

Additionally, Charter Section 804. - Competitive bidding states “The Purchasing Agent **shall employ** competitive bidding in accordance with policies established by the Council.” Obviously, in the context of this sentence, “employ” means “to make use of” rather than “to use or engage the services of.” “Employ” Definition and Meaning, Merriam-Webster <https://www.merriam-webster.com/dictionary/employ> Thus, returning to 405(b) and 216, assuming arguendo that “employ” also means “to make use of.” The result is the same: Charter Section 216 requires a Council resolution to “employ” the ZBHE.

The filing of the Public Information Act requests with the Council Administrator was not only a method of making a record, but was also a means to subtly make objections to the lack of resolutions with the County Council and Office of Law. From this, the ZBHE improperly

¹ Charter Section 216 uses the word “advisors” rather than counsel because in the list of “legal, financial, or other technical” it does not make logical or grammatical sense to refer to financial or technical advisors as “counsel.”

concludes that Protestant was somehow legally obligated to bring a challenge to the authority of the Board of Appeals Hearing Examiner in prior Hearing Examiner matters. Not only is this position without legal merit, but to what end would doing so have accomplished? Clearly, the motions would have been similarly rejected.

Discussion of the lawfulness of appointments of the Board of Appeals Hearing Examiner are useful for a full background, but it totally misses the issues of fact and law that the Board of Appeals Hearing Examiner and the ZBHE are two district offices with authority deriving from different authority in the Howard County Charter and County Code. As a factual matter, there was no ZBHE matter to challenge in 2022. Had it then been brought, it would have needed to include Katherine Taylor and her position as ZBHE—a position which it turns out she has never held.

Furthermore, the Zoning Counsel was not hired until early January 2026. Thus, it was impossible to challenge the failure of the Zoning Counsel to be hired by the vote of three votes of the Council earlier. Moreover, ZBHE's conflation is actually belied by how she signed the Report: "Zoning Board Hearing Examiner."

THE ZONING BOARD HEARING EXAMINER'S RELIANCE ON LACHES IS WITHOUT LEGAL MERIT

From this analysis, the ZBHE then made a "throw it at the wall and see if it sticks" addition to the cut and pasted provisions from ZB 1130M that the motions should be denied because of "the equitable defense of laches." Report at page 8. The ZBHE's logic eludes clear reasoning. The ZBHE made its specious conclusion without defining the word in a single unilluminating sentence and "announced its holding as an *ipse dixit*² but engaged in no analysis

² "*Ipse dixit* is a Latin term that translates to 'he himself said it.' In legal contexts, it refers to an assertion or statement made by an individual based solely on their own **authority**, without any supporting **evidence** or proof. It is often used to criticize arguments or claims that rely solely on the speaker's authority, rather than objective evidence or reasoning. In legal **proceedings**, arguments that rely on *ipse dixit* are generally not considered persuasive, as they

whatsoever of the issue before it. Neither did it cite authority where such analysis might be found.” *Whack v. State*, 659 A.2d 1347, 338 Md. 665, 680-681 (Supreme Ct. 1995). In contrast, regarding the doctrine of mistake the ZBHE cited numerous cases and applied the law to the facts.

To the extent that the Maryland Rules of Civil Procedure are applicable here before the Zoning Board, Rule 2-323(g) states that laches is an affirmative defense. As stated, Petitioner chose not to reply to Protestant’s motions. There was no response or any affirmative defense. “Affirmative defenses are considered waived if not raised in a party's answer.” *Holloway v. State*, 232 Md. App. 272, 157 A.3d 356, 361 (Appellate Ct 2017).

The Maryland Supreme Court has explained:

In its application, “[t]here is no inflexible rule as to what constitutes, or what does not constitute, laches; hence its existence must be determined by the facts and circumstances of each case.” [Citations omitted] It is, however, well settled that laches “applies when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party.” *Frederick Road Ltd. Partnership v. Brown & Sturm*, 360 Md. 76, 117, 756 A.2d 963, 985 (2000), citing *Inlet Assoc. v. Assateague House Condominium Ass'n*, 313 Md. 413, 438-39, 545 A.2d 1296, 1309 (1988).

Liddy v. Lamone, 919 A. 2d 1276, 1283-1284 (2007). In the instant case, there was no delay. Protestant timely filed the Motions 30 days before the Administrative Hearing. The Petitioner had 15 days under the Zoning Board’s Rules of Procedure to respond. Yet Petitioner chose not to respond either within that time, nor within the additional time before the Administrative Hearing nor with the ZBHE (“Petitioner did not address them in its Memorandum of Law” Report page 3), nor in the time since the ZBHE Report was issued. This tactical decision seems to have worked: there has been no prejudice to Petitioner. The hearing before the ZBHE lasted little more than 30 minutes and a favorable Report was issued. There is no opposition to the

lack the necessary factual or legal support to establish their validity. Instead, legal arguments are expected to be based on sound legal principles, objective evidence, and reasoned analysis.” Cornell Law School, Legal Information Institute, https://www.law.cornell.edu/wex/ipse_dixit

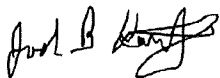
rezoning request. To the extent that these Exceptions to the Preliminary Motions will result in de minimis time before the Zoning Board to consider oral argument is wholly of the ZBHE's own making; had the ZBHE not spent nearly one-third of the Report on the Motions to Disqualify, Protestant would not have filed an Exception.

To further parse the nonsense of the ZBHE's *ipse dixit*, the Zoning Board is aware that Protestant has made similar Motions to Disqualify in each of the pending Zoning Board cases: ZB 1130M, ZB 1131M, ZB 1132M and this case ZB 1133M. There was no delay in prosecuting these matters before the Zoning Board. If anything, some might argue that there was too much. Additionally, one must accept the conflation that the Motions to Disqualify should have been brought several years ago in a Board of Appeals Hearing Examiner case. These cases did not involve the Petitioner, so it is not possible for laches to be attributed to them. Furthermore, as noted this would be before any Zoning Board case was pending, while Katherine Taylor was still acting as Board of Appeals Hearing Examiner, before Ms. Nichols was designated as ZBHE, and before Mr. Forman was hired as Zoning Counsel in January 2026. The matter was not ripe. To even suggest that somehow the issue of Nathaniel Forman's position of Zoning Counsel could have been brought prior to January 2026, illustrates the conclusory nonsense.

The ZBHE would apparently require Protestant to raise the issue in each and every Board of Appeals Hearing Examiner case. Presumably if Protestant were to make a motion in a Board of Appeals Hearing Examiner case, the response would be the same: "Granting the Motions would unjustly delay and de-rail the pending matter causing prejudice to the Petitioner, and would inject uncertainty into all pending [Board of Appeals] matters." Report page 5. The claim would be that it would bring delay and inconvenience to numerous parties, but who were not Petitioner. If and when Protestant decides to bring a challenge in a Board of Appeals Hearing

Examiner case, one might try to claim laches regarding a challenge to that position. However, consideration of the ZBHE Report is neither the right time nor the proper forum to resolve the issues regarding the Board of Appeals Hearing Examiner qualifications which apparently underlie the ZBHE's *ipse dixit* conclusion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joel B. Hurewitz". The signature is stylized and cursive.

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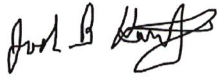
April 15, 2026

CERTIFICATE OF SERVICE

I, Joel B. Hurewitz certify that on April 15, 2026 I served to the below named persons the attached copy of **EXCEPTIONS OF PROTESTANT JOEL B. HUREWITZ**

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