



Date: 1 June 2022

Subject: Zoning Board Rules of Procedure Revision

Dear Zoning Board Members,

My name is Stu Kohn and I am the President of the Howard County Citizens Association, HCCA. As you know, we continue to be very concerned that the Zoning Board Rules of Procedure have been needing major improvements for years. Now is the time to listen and take the necessary action to be assured all participants will receive the justice we have been seeking for years. We simply are looking for accountability and Due Process. This body needs to unequivocally zone in on the problem and once and for all remedy the situation. We know some of you want to, but please prove it! This is an opportunity to get it right – now and in the future, no matter how long it takes. The zoning process should be one of your major priorities for all of your constituents. Please fix it!

When HCCA testified on CB77-2021 we stated a lot of apprehension regarding having the Hearing Examiner as the front door. We still do! However, we would like your consideration to take this opportunity to include other topics as stated in the notification, “to modify alter and/or change by either additions and/or deletions to the existing Rules of Procedure.” This being the case there needs to be conversation and action taken in the following areas in an attempt to get it right. This should include the following in no particular order especially when some of these are included in the Rules of Procedure of the Hearing Examiner, Board of Appeals or Planning Board. We need consistency and standardization amongst these entities. However, we recommend that many of the sections be re-evaluated for clarity. There should be an appointed volunteer of interested parties to review and suggest needed revisions.

- Implementation of 202G – see attachment.
- When the Zoning Counsel is to participate.
- Any Motion filed shall be decided immediately without any delays.
- Issuance of Subpoenas when required see – the Board of Appeals Rules of Procedure on page 8, section 2,208(h) and stated in Section 7.5 in the Hearing Examiner’s Rules of Procedure.
- Reconsideration Section amended to require a response from the Zoning Board. This is included in the Hearing Examiner’s Rules of Procedure under Section 11.6.
- Mandate that zoning terminology should be associated with the definitions as set forth in the American Planning Association dictionary not resort to the standard dictionary.
- Elimination of going to Mediation.
- Sanctions declared when anyone displays disorderly conduct.

- Zoning Board Members not to display their biases by stating in proceedings any negative remarks of any party.

If the above was discussed and adopted in the Rules of Procedure only then will we have the opportunity to perhaps believe the scale of justice might be properly balanced by having a system, we can better depend on.

Now let's discuss the draft to reflect CB77-2021. Please refer to the draft for review.

Page 1

Legal Advisor – will the County Solicitor be present at the Hearing Examiner phase? If we are not to get gender specific, then need to change “his/her” to “their”.

Zoning Counsel – what is the criteria as to the appearance of the Zoning Counsel in zoning cases. This requires to be completely spelled out in this document as there are areas within this document which infers the Zoning Counsel's appearance is a prevalent body in zoning cases.

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Open Hearings – add at the end the following: If a Board-member, Hearing Examiner or Zoning Counsel is found to have had communication regarding the case outside of the hearing then said person(s) shall have to recuse themselves.

Page 4

a. Amendments – delete the word “or” and add after Hearing Examiner - Zoning Counsel and Protestants.”

b. Substantial Amendments – reading this segment the question is why wasn't it implemented in the Erickson case?

4. b. Resubmission of Petition – Please define the word “substantially.”

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C. Notice to the Public 1. Advertising – why the suggested deletion?

2. Posting of Property 5th line – refer to “the close of the hearing(s) to allow time for Board members or Hearing Examiner to visit the site.” Why would it be at the “close of the hearing”?

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D. Conduct of Hearings

1. Docket – suggest you look at the Hearing Examiner Rules of Procedure in 7.5 on page 5 regarding “Preliminary Matters” as this is currently not a part of the Zoning Board Rules of Procedure. Add “2. Preliminary Matters”.

2. Presentation would be number 3. It states, “zoning counsel.” This implies the zoning counsel will be present in all cases. Is this true?

3. Order of Presentation and Burden of Proof the 6th line – “he or she” is changed to non-gender. Should be standard throughout this document.

11th line – after Zoning Board add “Hearing Examiner.”

Before “a.” suggest you add “a. Preliminary Matters” and change “a” to “b” etc.

Refer to “c” – add after last sentence – If it is determined during the case that a head or designee of a given Agency is required for clarification or more information then they shall be asked to testify under oath and be subject to cross-examination. This should also apply to the Planning Board for consistency and fact finding. *Sidenote: CB71-2018 was to correct the problem, Then Council-members Ball and Terrasa voted in Favor. CB32-2019 was to do the same but it too failed with Council-members Walsh and Yungmann voting in Favor. We don't understand the logic of its failure especially if one believes in Due Process.*

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(f) – refer to end of section as it states, “zoning counsel.” Does this mean that the zoning counsel will be present in all cases?

4. Oath – reference “his/her” change to “their”

6. Matter of Law – after the word “objections” add “shall be immediately ruled on”

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7. Legal Memoranda – add after “open sessions” a new sentence – “A copy shall be sent to all parties in the case.”

11. Communication Outside of a Hearing 4th line – after the word “case” add a sentence – “Any Board or Hearing Examiner member found guilty by not abiding shall immediately recuse themselves from the case.”

12. Signing Up to Testify -- What is the procedure when in virtual mode?

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(a (1)) – change “his/her” to “their”

E. Virtual Proceeding – reference the word “reasonable.” What is the definition of “reasonable”?

F. 8th line – refer to “include a statement” When is this implemented?

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3rd line – change “his or her” to “their”

Refer to “a” -- At the end add “by contacting the Board’s Administrator for instructions.”

2.1.1 Audio/Video – at the end add “Any potential objections by a given party shall be recognized by raising a hand.”

Question -- If a party is calling in by phone how will they be recognized?

2.1.2 Troubleshooting – what is the “messaging system?”

2.3 Staging and Venue – a) what happens if a party does not have a camera or microphone on their computer system? What happens when there is a system failure?

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2.2 Attendance (b) – How much time in advance to add an additional attendee not previously invited to a proceeding does the party have to alert the Zoning Board Administrator prior to the start of proceedings?

3.2 Use of Documents (a) – after the last word “witness” add “and opposing party.”

(b) – after the last word “proceedings” add “by contacting the Zoning Board Administrator for instructions.”

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A, Report of Hearing Examiner –(2) after the words “support of it” add the words “or “Denial.”

(B) Exceptions -- refer in the first sentence “the Zoning Counsel” once again it looks like the zoning counsel is present in all cases.

7th line – change the word “excepts” to “disagrees”

After the next “excepts’ change to “disagrees with the Hearing Examiner findings”

12th line – after the last word “exception” add “and if necessary, ask for key witness(s) for questioning”

(D) Majority Vote – Should state that any tie vote shall not be accepted.

Page 14

H. Time Period – What is the penalty if the Decision and Order is greater then the required 90 days?

Section 2.405 – Reconsideration of Decision and Order – B. Written Petitions – refer to 2nd line – “the petitioner” why served by the petitioner? See the Hearing Examiner’s Rules of Procedure where it states, “the Hearing Examiner will issue a written statement.”

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C. Response to Reconsideration – refer to “may” change to “shall”

D. Board’s Authority – refer to last sentence – add a sentence which states, “The Board shall in writing to all parties, state why the Reconsideration will be heard or if denied the rationale which either decision shall be sent to all parties.”

In closing, we only hope this body will take the necessary action to get the zoning process right. We believe that with the incorporation of the aforementioned we would be delighted to think we might have a better process. One can only hope! We are extremely tired as business as usual!

While we are discussing the zoning process how about consider getting rid of the Community Enhancement Floating Zone or CEF. It is too subjective. Have the Petitioner prove Change and Mistake?

Zoning Board Member Walsh, said it best in her dissent statement, “There was no due process, neither rules applicable nor consistently enforced, throughout the interminable hours of hearings – flung in whole, then in part, to a virtual realm. There were no sufficient evidentiary bases for the findings and conclusions here stated – not as a majority originally voted upon, even less so as subsequently modified. I entirely dissent.” This says it all!

Theoretically if all areas of concerns were to be adopted as we suggest then perhaps no Zoning Board Member would have to write such a powerful statement which for the most part is the current par for fairness in Zoning Board cases. Please lets make our zoning process something we can ALL Be VERY PROUD!

Thank You.

Stu Kohn
HCCA President

Attachment

Charter -- ARTICLE II. - THE LEGISLATIVE BRANCH

202 The County Council -- (g) Planning and Zoning

1. 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.

Section 209. - Legislative procedure.

(a) *Enacting clause.* The style of the enacting clause for all laws of the Council shall be: "Be it enacted by the County Council of Howard County, Maryland." All laws shall be passed by original bill.

(b) *Titles.* Each law enacted by the Council shall embrace but one subject and that subject shall be described in its title; and no law or section of law shall be revised or amended by reference to its title or section only.

Section 211. - The referendum.

(a) *Scope of the referendum.* The people of Howard County reserve to themselves the power known as "The Referendum," by petition to have submitted to the registered voters of the County to approve or reject at the polls, any law or a part of any law of the Council. The referendum petition against any such law shall be sufficient if signed by five per centum of the qualified voters of the County calculated upon the whole number of votes cast in the County for Governor at the last preceding gubernatorial election. Such petition shall be filed with the Board of Supervisors of Elections of Howard County within sixty days after the law is enacted. If such a petition is filed as aforesaid, the law or part thereof to be referred shall not take effect until thirty days after its approval by a majority of the qualified voters of the County voting thereon at the next ensuing election held for members of the House of Representatives of the United States; provided, however, that if more than one-half but less than the full number of signatures required to complete any referendum petition

against such law be filed within sixty days from the date it is enacted, the time for the law to take effect and the time for filing the remainder of signatures to complete the petition shall be extended for an additional thirty days. Any emergency measure shall remain in force from the date it becomes law notwithstanding the filing of such petition, but shall stand repealed thirty days after having been rejected by a majority of the qualified voters voting thereon. No law making any appropriation for current expenses shall be subject to rejection or repeal under this section.

(b) *Form of petition.* A petition may consist of several papers, but each paper shall contain a fair summary of the Act or the part of the Act petitioned upon; and there shall be attached to each such paper an affidavit of the person procuring the signatures thereon that, to the said person's own personal knowledge, each signature thereon is genuine and bona fide, and that to the best of his or her knowledge, information and belief the signers are registered voters of the State of Maryland and Howard County, as set opposite their names. The Board of Supervisors of Elections shall verify the registration of said petitioners.