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SB1045

March 7, 2024

TO: Members of the Senate Education, Energy, and the Environment Committee

FROM: Nina Themelis, Director of the Mayor's Office of Government Relations

RE: Senate Bill 1045 – Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review

POSITION: Oppose

Chair Feldman, Vice-Chair Kagan, and Members of the Committee, please be advised that the Baltimore City Administration **opposes** Senate Bill 1045.

The bill would expand standing to appeal zoning decisions, including a comprehensive planning or rezoning action, in Baltimore City and charter counties.

Current MD Code, Land Use, § 4-401 governing the procedures for judicial review of a zoning decision, is not applicable to Baltimore City. Senate Bill 1045 would result in § 4-401 being applicable to Baltimore City. Applying § 4-401 to Baltimore City creates a conflict between that provision and Land Use § 10-501 which specifies the procedures applicable to Baltimore City for judicial review of a decision of the Board of Municipal and Zoning Appeals or a zoning action by the Baltimore City Council. Under § 10-501, a person, taxpayer, or unit of City government seeking judicial review of a decision must be aggrieved by the decision. As written, SB 1045 would provide standing to seek judicial review of a Board decision or a zoning action by the City Council to:

- a person aggrieved by the decision or action,
- a corporation, association, or any other organization if it meets the statutory definition,
- a taxpayer, or
- an officer or unit of local government.

In contravention of existing case law and § 10-501 of the MD Land Use Article, SB 1045 does not require "a taxpayer" to show aggrievement of any form, whether as traditionally defined by case law or by the new definition of aggrievement in SB 1045 which requires a showing of "injury in fact." Section 10-501, relating to Baltimore City, permits a taxpayer to seek judicial review only if they are also "aggrieved". Accordingly, this bill will create an internal inconsistency within the MD Land Use Article. Furthermore, if standing is defined so broadly as to allow a petition by anyone who is a taxpayer in Baltimore City, there is virtually no limit on who has standing.

Additionally, the amendment of MD Land Use Article, § 4-401 (a) by SB 1045 expands the scope of decisions for which judicial review may be sought by including "a comprehensive planning or rezoning action." Defining a zoning action to include comprehensive planning or rezoning conflicts with established Maryland Supreme Court precedent. See *Maryland Overpak Corp. v. Mayor and City Council of Baltimore*, 395 Md. 16 (2006). By its nature, a "zoning action" is a piecemeal decision affecting one project as controlled by a set of specific standards. State law has never required local comprehensive planning and zoning decisions, which are legislative rather than quasi-judicial in nature and generally contain no findings of fact, to be subject to judicial review. This would be a significant expansion of both what can be challenged and how it gets challenged.

Under established precedent, a person seeking judicial review of a zoning decision must be a property owner that has prima facie aggrieved status by virtue of the conjoining, affronting, or nearby location of their property, or almost prima facie aggrieved status and additional facts establishing a special interest or damage unique to the petitioners which is different from the public generally. See *Ray v. Mayor and City Council of Baltimore*, 430 Md. 74, 85 (2013). How a petitioner establishes that they are specially affected by the zoning decision is based on "a fact-intensive, case-by-case analysis." *Id*. at 81. The *Ray* Court noted ""[w]ith the exception of those protestants who are prima facie aggrieved, the requirement that an individual prove special aggrievement has been well-established for more than half a century." *Id* at 89.

Senate Bill 1045 provides a definition of aggrievement as an "injury in fact." The definition of injury in fact has two components that must be present: (1) a property right or personal interest that is distinct from or specifically affected in a way that is distinct from the general public; and (2) "a negative impact, or the threat of a negative impact, to a person's health or use and enjoyment of a natural resource or the environment, including a negative impact to aesthetic, recreational, conservational, and economic interests shared among community members." The second prong of the test for what may constitute an "an injury in fact" is exceedingly vague and includes impacts shared generally by the public. Not only will courts struggle to apply this standard, but the standard itself will rewrite decades of case law that requires an individual adverse effect not shared by the community to establish aggrievement.

Furthermore, the proposed bill runs counter to case law precluding community associations from seeking judicial review unless the association itself owns property specially affected. See *Greater Towson Council of Community Associations v. DMS Development, LLC*, 234 Md.App. 388 (2017). The Appellate Court of Maryland noted that a community association may have standing before a local appeals board to challenge a zoning decision, but not have standing to challenge the same zoning decision in a circuit court due to the stricter standards for establishing standing for judicial review. *Id*. at 407.

The changes made by SB 1045 would create conflicts between sections of the Land Use Article, and between the Land Use Article and established case law regarding standing to challenge zoning decisions. Moreover, SB 1045 would hinder the development process by exponentially increasing the number of appeals that could be filed to challenge zoning decisions made by local governments. Senate Bill 1045 would expand both the definition of who has standing to seek judicial review of a zoning decision, and the types of zoning decisions subject to judicial review, including those decisions made by a legislative body that are legislative in nature.

We respectfully request an **unfavorable** report on Senate Bill 1045.