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Testimony in Support of SB1045 - Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review

Mr. Chair, Madame Vice Chair, and Members of the Senate Education, Energy, and the Environment Committee:

SB1045 would restore balance to aggrieved parties to challenge certain development projects that negatively impact their communities.

Background

The bill before the committee is meant to narrowly respond to a specific incident in my own community. Last summer, construction began on the development of two homes, each worth over $1.5 million, on steeply graded land in the Round Bay neighborhood of Severna Park known for its involvement in the Civil War. The area of land, known as Mt. Misery, was used by Union soldiers to temporarily set up camp early in the war. Because the land is well within 1,000 feet of both the Magothy and Severn Rivers (squarely within the Critical Area), the developer had to seek a modification to the law, which was granted to the shock of many local residents.

When property owners in the adjacent lots attempted to challenge this modification, they were denied the opportunity to speak at the Board of Appeals hearing given a lack of "standing." Unfortunately, the high-income development proceeded in this environmentally fragile area to the detriment of immediate neighbors as well as anyone who works to improve the health of the Chesapeake Bay tributaries in my district.

Existing Law

Legal standing is, simply, the right of a person or party to bring a lawsuit in court. Historically, the legal doctrine of standing was developed based upon constitutional separation of powers concerns. The U.S. Constitution requires that only actual "cases" and "controversies" be heard by federal courts to avoid those courts stepping out of judicial matters and into policy concerns.

Just as important as understanding what the doctrine of standing is, is understanding what it is not. It is not relevant to the actual merits of any claim. It does not tilt the playing field in either direction for any party. This legal doctrine simply dictates when a person is entitled to bring an action in the first place. If a party has no case, then it will lose; if a party brings a frivolous

lawsuit, there may be severe sanctions. Merely altering the scope of who has standing to be heard in court does nothing to alter the merits of a case.

At various times in American history, the U.S. Supreme Court has interpreted the evolving standing doctrine in a broad or narrow fashion. But even under its narrowest and most conservative interpretation, federal standing doctrine has been far broader than it is in Maryland today. This should raise serious questions for Maryland policymakers regarding why our state, without a direct constitutional directive, should be more restrictive than the federal government in determining who should be entitled to their day in court.

Solution

SB1045 would make changes to:

1. Zoning Actions Subject to Judicial Review – The bill alters the legislative body zoning actions subject to judicial review by including a comprehensive planning or rezoning action of a legislative body.
2. Associational Standing – The bill allows a corporation, an association, or any other organization to request judicial review, by the circuit court of the county, of a decision of a board of appeals or a zoning action (including a comprehensive planning or rezoning action) of a legislative body, if it (1) consists of two or more members joined by mutual consent for a common purpose; (2) has one or more members who meet one of the standing requirements under the statute; (3) seeks to protect interests related to its purpose; and (4) neither the claim asserted nor the relief requested requires the participation of a member.
3. Aggrievement – The bill specifies that a person is aggrieved by a decision or an action if the person can demonstrate that as a result of the decision or action the person is likely to suffer an "injury in fact." "Injury in fact" means an invasion of a legally protected interest that is (1) concrete and particularized; (2) actual or imminent; and (3) not conjectural or hypothetical. It includes (1) a property right or personal interest that is distinct from, or specifically affected in a way that is distinct from, a property right or personal interest of 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.
4. Judicial Review of Specified Types of Development – Judicial review may not be requested by a corporation, an unincorporated association, or any other organization if the decision of the board of appeals or zoning action is related to (1) development of affordable housing under an affordable housing program, as specified under the Local Government Article; (2) development of a brownfield site, as specified under the Tax-Property Article; or (3) redevelopment of previously developed property.

On the last point, I would like to make my intentions clear. This bill is meant to address a specific concern that was magnified by the Mt. Misery incident. In this case, neighbors who any reasonable person could admit were tangibly harmed by this development, not at least of which by the increased runoff going through their property, could not use the existing appeals process because our state has interpreted standing in such a rigid, overly restricted manner. Because of this interpretation, these neighbors were not even given the opportunity to effectively challenge this development on the merits or seek reasonable modifications to the building plans.

This development in question was far from what anyone would call affordable housing. Given the housing crisis we find ourselves in, I have no intention of allowing expanded applications of standing to be used or abused by those who seek to challenge smart growth policies. That is the reason I included provisions outlining the extent to which this expanded standing authority could not be used. I welcome input and suggestions from stakeholders to strengthen those provisions to prevent abuse and to strike the right balance between protecting our environment and providing the additional development capacity that our communities need.

For these reasons, I respectfully request a favorable report on SB1045.