



March 6, 2024

The Honorable Brian J. Feldman, Chair
Education, Energy, and the Environment Committee
Miller Senate Office Building, 2 West
Annapolis, MD 21401

Oppose: SB 1045 – Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review

Dear, Chair Feldman and Committee Members:

On behalf of the NAIOP Maryland Chapters representing seven hundred companies involved in all aspects of commercial, industrial, and mixed-use real estate I am writing in opposition to SB 1045.

This bill broadens those that have standing to appeal land use and zoning decisions to include individuals and associations that meet the federal definition of standing to appeal environmental decisions. These individuals and associations are authorized to seek judicial review of quasi-judicial development decisions and legislatively enacted planning and zoning documents including the adoption of a comprehensive rezoning map or a comprehensive plan.

To establish standing an appellant must demonstrate a negative impact or a threat of a negative impact to the person's health, use and enjoyment of a natural resource or the environment. To access the courts a person need only show a negative impact to the person's aesthetic, recreational, conservational, or economic interests.

The rationale for NAIOP's opposition includes the following:

- The broadening of standing proposed in the bill would allow virtually any association or individual, including nonresidents, to use the broader definition of injury to claim potential harms and appeal quasi-judicial decisions on individual development projects. The same group is also authorized to appeal legislative enactments including those that adopt comprehensive rezoning maps and comprehensive land use plans.
- Quasi-judicial development decisions involve findings of facts about the application of regulatory requirements to one property. Standing to appeal is usually limited to those who are nearby and can show they are impacted in a way that is different than the general public.
- Legislatively enacted comprehensive plans and rezonings are broad policy statements about local and regional growth needs over a planning period that may extend 10 or 20 years. These are not final decisions to be reviewed on appeal because they require development applications and further administrative review and approval to be implemented. At that time aggrieved parties have access to judicial review of approved plans and permits.
- In *Anne Arundel County v. Bell*, the Court of Appeals held that comprehensive zoning is fundamentally legislative and because of its broad, interrelated policy nature the rights of appeal are based on "Taxpayer Standing" where aggravement is determined by the potential harm caused to the appellant's property and to taxpayers as a whole. SB 1045 allows non-taxpayers to appeal.
- In *Bell*, the court evaluated the implications of granting adjacent property owners standing to appeal the comprehensive rezoning of more than 59,000 parcels of land. The court noted this would enable thousands of plaintiffs to challenge comprehensive zoning legislation concluding, "This would be unworkable, entirely."

- SB 1045 proposes a definition of standing to appeal that is significantly broader than what the *Bell* court reviewed. Opening the development review and approval process and the land use planning process to the broad universe of people and associations authorized to appeal in the bill would make implementation of land use and zoning plans perilous and subject to constant delays and second guessing. Difficult land use policy decisions made by elected officials would be challenging to implement. The public consensus embodied in comprehensive plans and zoning could be delayed and partially undone by the scope of opinions and appeals that would have access to the courts.

For these reasons NAIOP respectfully requests your unfavorable report on SB 1045.

Sincerely,



Tom Ballentine, Vice President for Policy

NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: Senate Education, Energy and Environment Committee Members
Nick Manis – Manis, Canning Assoc.