SB 1045 - Dupcak.pdf
Uploaded by: Danielle Dupcak
Position: FAV

Written Testimony of Danielle Dupcak
Round Bay Resident
624 Old County Road
March 7, 2024
Re: SB 1045

At 7:30 in the morning on Friday, August 18, 2023 a developer began tearing down trees and ripping apart the hillside known as Mount Misery.
A grading permit had been approved. A lawsuit had been dropped. Bulldozers came.

As a neighboring property owner and Round Bay community member, I have been involved with contesting the development of two narrow and steep lots on Mount Misery in Severna Park for years. As a lay person, navigating the process has been challenging. I believe community members, like myself, are at a sizable disadvantage as we are not familiar with the Code, do not know the ins and outs of the processes, do not have ongoing relationships with personnel at Planning & Zoning and Inspections & Permits and do not necessarily have the financial means or resources at our disposal to engage legal or other expert representation. By contrast, developers stand to make great profit from their projects and can afford lawyers and engineers to represent them.

In the case of Mount Misery, we have only gotten as far as we have because I was fortunate enough to have made the acquaintance of Paul Spadaro, President of the Magothy River Association. Paul took an immediate interest in the then proposed development because of the historical location and because of the adverse effects the development would have on the environment and the watershed he so tirelessly works to protect. While Paul supported us with his knowledge, resources and contacts, it was not enough.

There are so many twists and turns to the Mount Misery story, but from day one, we were denied a voice. My neighbor, Sue Mead, and I were not given the opportunity to speak at the Board of Appeals hearing. This came as quite a shock, as we had inquired in advance what to expect (being unfamiliar with the process) and had been instructed in writing by the Board Clerk that we would have our chance to present. Despite these instructions, we were not in fact allowed to argue against the motion. We were not allowed to speak a word. We were deemed not to have “standing” and were rudely dismissed, before the merits of our case were even considered.

Without “standing”, it has been an uphill battle to fight the development that is happening next door to my home. That the developer has been permitted to disturb steep slopes (measuring over 30% on the eastern side and over 50% on the western) in the critical area, on a narrow ridge, is just plain irresponsible. Because a bill like 1045 is not currently in place, aggrieved citizens like myself, who have clear “skin in the game,” have no recourse against a decision made by the Board of Appeals. Nor do organizations like the Magothy River Association, who should be given a voice in cases where interests related to their purposes are threatened. They

should have “standing” so that they can continue to do the important work of protecting our watershed.

Before closing, I’d like to thank Senator Gile and Delegate Lehman for introducing this important legislation. I am in favor of Senate Bill 1045 and hope you will support this bill. Thank you.

CLA Favorable SB 1045.pdf
Uploaded by: Evan Isaacson
Position: FAV

CHESAPEAKE
LEGAL ALLIANCE

106 Ridgely Ave.
Annapolis, MD 21401
T: 410-216-9441
F: 410-216-7077
www.ChesapeakeLegal.org

Support for Senate Bill 1045

Dear Chairman Feldman and Members of the Committee:

The Chesapeake Legal Alliance supports SB 1045. 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.

It is important that this committee understand what the doctrine of standing 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.

At a time when this country is facing a widely recognized "access to justice" crisis, every state should be examining what they can do to reduce barriers to the courthouse doors. Too often standing is used by deep-pocketed litigants to wear down opposition and prevent meritorious claims from seeing the light of day. This only perpetuates a legal system that works for the wealthiest and most well-connected litigants but not for the vast majority of Americans. This bill would be one such solution to this worsening problem. Rather than introducing a new or untested standard, and the uncertainty that would flow from it, this bill simply adopts the well-understood federal doctrine.

We urge this body to resist any suggestion that the bill would wreak havoc on local governments by creating a new standing test for local land use matters. To use a real world example, *Baltimore County currently has an even broader and more flexible standard than would be introduced by this bill*. The Baltimore County Code determines whether or not one has standing by asking whether the petitioner "feels aggrieved" by the local decision. On its face, this standard asks only about a person's perception and not even any objective or concrete impact. While we would be supportive of such a standard, we believe that the narrower standard in this bill introduces a well-tested formula based on a well-understood federal doctrine that should reduce uncertainty for all parties. And we are aware of no chaotic free-for-all in Baltimore County tribunals due to their more flexible approach to standing. In fact, Baltimore County tribunals and officials, unlike in other counties, do not have to deal with needless

preliminary hearings and motion battles over standing that are waged simply for the purpose of limiting the access of county residents to be heard.

Finally, we note that the bill includes sensible exclusions where affordable housing developments and other smart growth proposals are at issue. At a time when this state and nation are facing an acute shortage of housing, we believe it to be prudent to signal that barriers and obstacles to the creation of affordable housing are not acceptable. At the same time, it is important to dispel any myths that the protection of natural resources is any such obstacle to the development of affordable housing. This false dichotomy being perpetuated by some is detrimental to the process of finding useful solutions to our housing crisis and to efforts to protect our remaining natural places. We are confident that the concept of expanded legal standing would have no bearing whatsoever on the creation of affordable housing and thus the exemption in this bill is of no concern.

For these and many other reasons we support Senate Bill 1045. For more information, you may reach Evan Isaacson at evan@chesapeakelegal.org.

106 Ridgely Avenue, Annapolis, MD 21401 • 410.216.9441 • Fax 410.216.7077 • www.chesapeakelegal.org

Gile - Support Letter for SB 1045 - uploaded 03062
Uploaded by: Karen Zaniker
Position: FAV

March 6, 2024

Written Testimony of Karen Zaniker
Swann Point Resident, Severna Park
Re: SB 1045

Dear Senator Gile,

I support SB 1045.

Since we made Severna Park our home in 1993, my family and I have experienced firsthand the detrimental effects of unchecked development on the residents and our community. In our current home since 2004, our property connects to the Koch Ivy Hill development down the street from Mt. Misery on Old County Road. This experience exposed us to the direct consequences of development: property damage, tens of thousands of dollars in home repairs and property restoration, diminished peace and privacy, and long-term adverse effects on property values, finances, and overall quality of life.

Despite dedicating countless hours over several years to voice our concerns and request consideration, our attempts to influence meaningful change as individual property owners and community members were thwarted. We faced opposition, notably from Koch and their legal team, which was adept at navigating and circumventing opposition, overcrowded schools, zoning, and environmental protections. Through regulatory loopholes, they optimized development for their benefit, often disregarding the well-being of its multiple adjacent neighborhood residents and the broader community. They appeared to have no intention or bounds to communicate, consider, come through on verbal commitments, or leave area residents equal to or better off than when they arrived.

Our efforts to collaborate with local community groups and county officials in search of mutually beneficial solutions were futile. For those of us lacking legal expertise or the financial means to afford prolonged legal representation, the possibility of effecting change seems out of reach. We, the residents and community members, are placed at a significant disadvantage in understanding and navigating the complex legal and regulatory landscape, further exacerbated by the behind-the-scenes dealings between developers, their legal teams, and local county relationships.

My participation in a public hearing against the Mt. Misery development highlighted the broader community concerns – environmental degradation, disregard for historical significance, property damage, financial impacts, and the overarching impact on our quality of life. In the case of Mt. Misery, this loud and opposing refrain of opposition was backed by local environmental and historical experts who provided data and evidence-based projections to demonstrate the inevitable outcomes. It did not matter.

I support SB 1045 and any initiative aimed at empowering county residents – particularly those directly affected – with a say in the county's approval process of developments that threaten to diminish our quality of life and community integrity.

Thank you, Senators Gile and Delegate Lehman, for championing this bill. I am in favor of Senate Bill 1045 and urge its passage by your colleagues and our representatives.

support SB 1045 2024.pdf
Uploaded by: Maureen Carr-York
Position: FAV

Written Testimony of Maureen Carr York
President of the Greater Severna Park Council
On SB 1045

Before the Senate Committee on Education, Energy and the Environment
March 7, 2024

The Greater Severna Park Council is an umbrella group of nearly 60 Home Owners' Associations, Community Associations, and Environmental Groups in Severna Park, as well as in portions of Arnold, Millersville, and Pasadena. Our members are deeply concerned about the effects of development on their own properties, community properties and the environment.

We, as well as our member organizations, frequently find ourselves treated as if we have no interest in land use decisions, zoning and the permit process despite the fact that we have seen again and again damage to existing homes, yards and open spaces after developers are allowed to skirt through what should be requirements but are often waived to make possible what truly should not be.

The Greater Severna Park Council supports and joins the Magothy River Association and Russell B. Stevenson, Jr. in asking for your support for SB 1045.

SB 1045 - CBF - FAV.pdf
Uploaded by: Paul Smail
Position: FAV

CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

Senate Bill 1045

Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review

Date:	March 7, 2024	Position:	**Favorable**
To:	Senate Education, Energy and the Environment Committee	From:	Paul W. Smail Vice President for Litigation and General Counsel

Chesapeake Bay Foundation (CBF) **SUPPORTS** SB 1045 which clarifies and expands standing to seek judicial review of planning and zoning decisions.

Access to the courts to redress grievances is protected in the United States Constitution, Art. III, sec. 2. Over time, federal jurisprudence around what cases and controversies courts may address resulted in the minimum requirements for standing under federal law. This is articulated on page 2 of the Fiscal and Policy Note for this legislation. Maryland has adopted this standard for the purposes of judicial review of certain environmental permits in Section 1-601 of the Environment Article. However, Maryland courts apply a much more stringent standard when evaluating standing in planning and zoning cases.

Maryland law requires that a party seeking judicial review of a planning or zoning decision demonstrate that they are aggrieved by the decision on an individual basis or as a taxpayer. This standing requirement typically requires a party to demonstrate that they are adversely and specially affected by a planning or zoning decision in way that is different from that suffered by the general public. Typically, only an adjacent landowner or taxpayer who suffers a pecuniary loss will have standing to seek judicial review of a planning or zoning decision. The application of this standard in limiting judicial review of such decisions has a meaningful impact on the Chesapeake Bay and natural resources of this State.

It is not disputed that the development of land is an economic driver. It is also not disputed that as our forests and wetlands and green spaces are converted to a built environment, more polluted runoff enters our streams, rivers, and the Chesapeake Bay. Under the present law, individuals and organizations that would otherwise be able to articulate a cognizable claim of injury to their interests under federal standing law would be excluded from seeking judicial review of a planning or zoning decision. Local governments and private entities benefit economically from these decisions while the citizens and natural resources frequently absorb the social and environmental costs and consequences. The adoption of the federal approach to standing would provide improved access to justice while protecting against frivolous claims.

CBF urges the Committee's FAVORABLE report on SB 1045

For more information, please contact Matt Stegman, Maryland Staff Attorney, at mstegman@cbf.org.

Maryland Office ▪ Philip Merrill Environmental Center ▪ 6 Herndon Avenue ▪ Annapolis ▪ Maryland ▪ 21403

2024_SB1045_MtMiseryStandingBill.pdf
Uploaded by: Paul Spadaro
Position: FAV

March 6, 2024

Paul Spadaro
President
Magothy River Association
309 South Drive
Severna Park, MD

Dear Senators,

The Magothy River Association supports Senate Bill 1045

We have all heard stories of someone building a house across the street and now their basement is flooded; or a shopping mall is built a block away from a community which now causes excessive traffic jams and accidents to cars and people trying to cross the street.

Senate Bill 1045 will give the MRA a voice in the decision process that we currently lack. Due to the extremely limiting requirements for "standing" as in the Mt Misery case, the appeals that MRA pursued and the neighbors were dismissed in favor of the developer. SB 1045 would allow MRA to defend environmentally sensitive areas and defend homeowners and communities who lack other avenues of support to protect their quality of life.

The development community is opposed to this standing bill. I have been a volunteer for more than 30 years with the MRA and have been protecting and preserving the Magothy River. Anne Arundel County is biased in favor of the developer. SB 1045 is needed to equal the playing field; to provide checks and balances to a broken subdivision process; and to give residents and the local communities a voice, which has been blocked by the development community
How broken is the process? Consider this: Project engineers have known for decades that the County will not rigorously check a site plan in detail. So with little chance of getting caught, site plans are submitted with partial and/or misleading data which allows developers to effectively dodge and evade County regulations.

Here is an example: Check out the engineering site plan for the Dobbins Island case (image attached). You will notice a rectangle dashed lined building along the Magothy River at Grays Point. It is marked as an "EXIST. GARAGE", indicating an existing garage next to an existing house. Compare that drawing with "google earth" at the same spot and you see a much different picture!!! You see something very odd, it is an "amphibious vehicle" with a rowboat inside parked next to the existing house. Was this accident or done with some purpose? By saying there was an existing garage, a developer could combine both footprints and build a larger waterfront home.

In the case of Mt Misery, County code requires a boring hole with a soil profile to check soil type (see attached site plan), notice the soil profile for boring hole B-1 has an elevation of 106 feet. However the actual location of the boring hole B-1 on the site plan is located at the summit of MT Misery and should have an elevation of 152 feet. Again another accident or done with some purpose? Drawing the boring hole at the summit with the soil profile near Old County Road at the base of

MT Misery deceptively indicates that the soils are “stable on top of the summit”, when actually, those soils are extremely unstable.

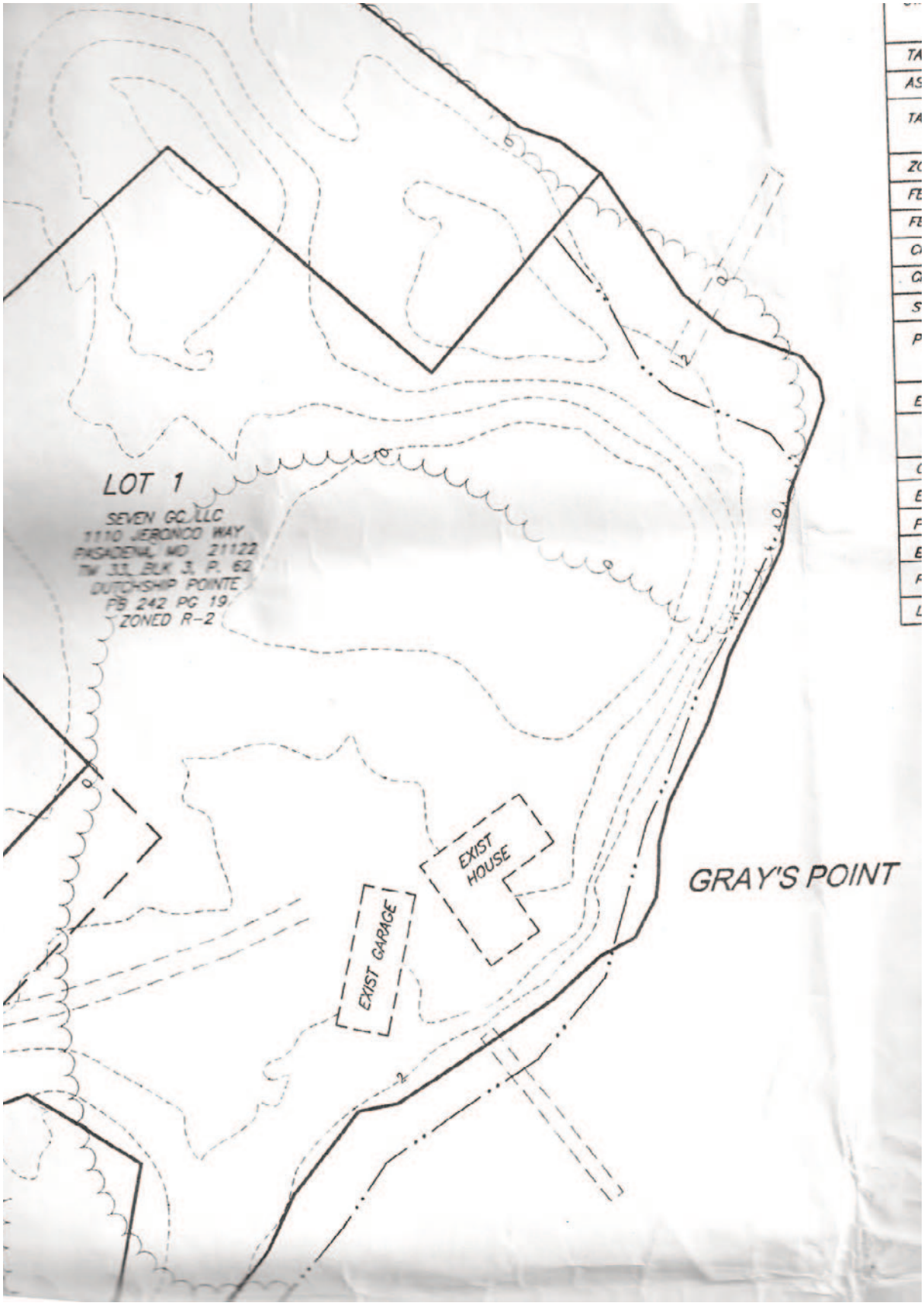
In the case of the Enclave project in Severna Park, project engineers are claiming that the proposed stormwater devices will treat 100% of the runoff generated from12 houses project. But checking the project engineers’ calculations they are only treating 14% of the project with most of the stormwater runoff going directly into Cattail Creek.

Weave, bob and evade. This is what happens when supervision is left to development contractors, owners and project managers. When the County allows the fox to guard the chickens, many times the environment suffers and homeowners suffer and it has been this way for decades. This is why people with older homes that live near new developments have water in their basements!

Steve Schuh campaigned on people before politics, Pittman campaigned on communities first and other politicians in this VERY general assembly have campaigned on I WILL FIGHT FOR YOU. It is time to those words are put into action and help little guy by Supporting SB 1045

Thank you

PauL Spadaro
MRA President


LOT 1
SEVEN GC, LLC
1110 JERONCO WAY
PASADENA, MD 21122
TM 33, BLK 3, P. 62
DUTCHSHIP POINTE
PB 242 PG 19
ZONED R-2
EXIST HOUSE
EXIST GARAGE
GRAY'S POINT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2, referenced in this decision, is incorporated
a part of this Order. The proposed
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Douglas Clark Hollmann
Administrative Hearing Officer

APPLICANT

**a building permit. In order for the
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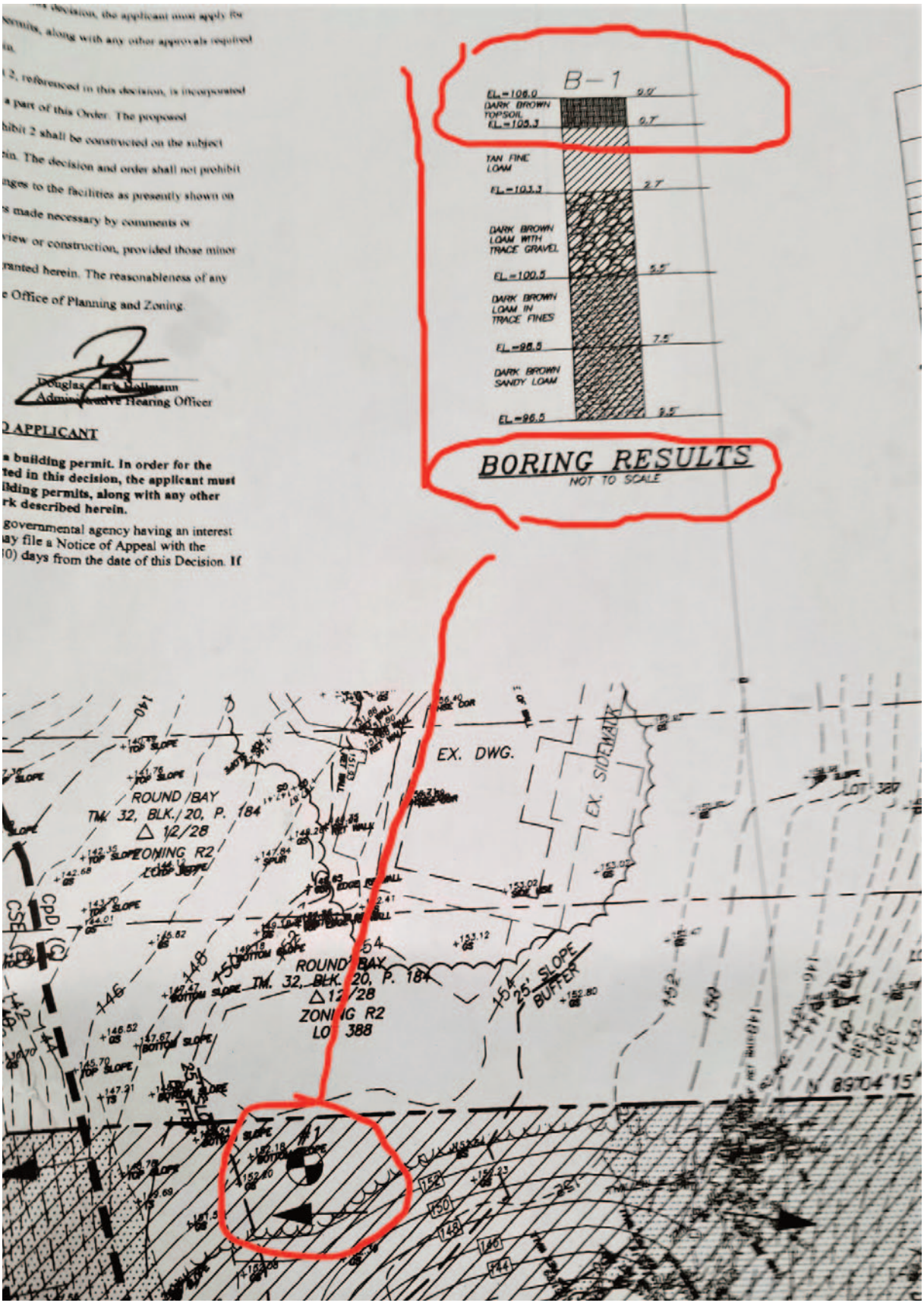
governmental agency having an interest
ay file a Notice of Appeal with the
0) days from the date of this Decision. If



Testimony of Russell Stevenson.pdf
Uploaded by: Russell Stevenson
Position: FAV

Written Testimony of Russell B. Stevenson, Jr.
On SB 1045
Before the Senate Committee on Education, Energy and the Environment
March 7, 2024

The law of standing in land use cases in Maryland is almost entirely judicially-created. The Land Use Article says only that persons who are "aggrieved" by a land use decision may petition the Circuit Court for review. The courts have interpreted this to require "special aggrievement,", which has been held to mean essentially that property owners must show that they have suffered some injury to their property rights as a result of a land use decision. With few exceptions, this standard has also been adopted by boards of appeals in the counties. In practice, this means that to begin with a property owner challenging a land use decision must own property adjacent to, or nearby, the land in question. They then must show that they have or will suffer "special aggrievement," the meaning of which is at best vague and ill-defined. The courts have struggled with how to create an easily applied standard, and have so far failed. This leads to extensive litigation in such cases.

There are two principal policies underlying rules of standing. First, they are designed to prevent a waste of judicial and administrative resources resulting from frivolous lawsuits. Second, they are intended to assure that litigants have a legitimate interest in the lawsuit, and that they will therefore represent legitimately and adequately the position they are asserting in the controversy. The current law of standing in Maryland serves neither of those policies well.

As to the first policy, the absence of a clear and easily applied rule leads often numerous hearings before a court or administrative body to determine the standing of the petitioner before a court ever has an opportunity to consider the merits. In one case in Anne Arundel County, for example, the Board of Appeals heard testimony on standing during eight separate meetings. The same problem only repeats itself in the courts, thus wasting rather than conserving judicial resources

Moreover, deep-pocketed developers with large amounts of money at stake often use challenges to standing to wear down citizen complainants, who usually can ill afford the attorneys' fees required to support their case on standing—even though their position on the merits may be meritorious. As a result, citizens interested in assuring that the land use laws are followed are all too often denied their day in court.

As to the second policy, it is important to recognize that land use laws are designed to protect more than property values. They are also intended to protect environmental and aesthetic values. As the US Supreme Court said in *Sierra Club v. Morton,* "Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process." Unfortunately, however, the existing law of standing does not take these important values into account; instead allowing standing only when there is a demonstration of injury to individual property values. Environmental and aesthetic concerns have been ignored. As a consequence,

citizens who are concerned that a land use change will degrade the environment or the quality of life of the community are generally held to have no standing to challenge it. This bill would allow citizens to challenge land use decisions on the basis that they would have adverse effects on protected environmental and aesthetic values.

This bill would also reverse a decision of our highest court that created a new rule of standing for challenges to land changes made in comprehensive Zoning. In *Anne Arundel County v. Bell* the Court of Appeals, in a four to three decision, held that even a citizen who resided next door to a property whose zoning had been changed by comprehensive zoning legislation, had no standing as a property owner to raise questions about whether the rezoning of the neighboring property was consistent with the law. The only basis for standing, according to that decision was taxpayer standing—which would require a showing that the zoning change would raise property taxes for all taxpayers. As the dissent in that case pointed out, citizens seldom challenge zoning decisions unless they believe that their property values have been harmed in some way, and thus their taxes would not go up, but down. In effect, this decision essentially eliminated all future challenges to comprehensive rezoning decisions. This bill would rectify that error.

Finally, individual citizens usually lack the resource to have their concerns about land use decisions heard in the appropriate tribunal. They often rely on associations of which they are members to represent their interests. Unfortunately, the courts have generally held that associations do not have standing in land use cases, unless they own property that might be adversely affected by the decision, and are therefore not permitted to represent the interests of their members who would have standing. This bill would correct that by allowing associations to have standing to assert the rights of their members, and thus allow citizens to pool together their resources to get their concerns heard.

For these reasons, I respectfully urge you to support this bill.

DG Written Testimony_SB1045.pdf
Uploaded by: Senator Gile
Position: FAV

DAWN D. GILE
Legislative District 33
Anne Arundel County

Finance Committee

Chair
Anne Arundel County
Senate Delegation

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Miller Senate Office Building
11 Bladen Street, Suite 3 East
Annapolis, Maryland 21401
410-841-3568 · 301-858-3568
800-492-7122 *Ext.* 3568
Dawn.Gile@senate.state.md.us

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.

SB1045-EEE_MACo_OPP.pdf
Uploaded by: Dominic Butchko
Position: UNF

Senate Bill 1045

Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review

MACo Position: **OPPOSE**

To: Education, Energy, and the Environment Committee

Date: March 7, 2024

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **OPPOSES** SB 1045. This bill broadly expands the universe of certain individuals who may seek judicial review of zoning actions, including comprehensive planning or rezoning actions. Granting overbroad standing into land use decisions invites litigation and delay, and frustrates the most essential efforts underway to boost housing stock.

The 2024 legislative session is being touted as "The Session of Housing." The Governor has a three-part legislative package aimed at promoting density, renters' rights, and securing additional federal financing for development. MACo has its own complementary housing package focused on reducing vacancies, tackling the proliferation of short-term rentals, and ensuring corporations owning residential property keep accurate contact information with the State. These are in addition to the slew of pro-housing bills that were introduced by members of both chambers. Unfortunately, SB 1045 is the antithesis of this positive momentum and will move Maryland in an anti-affordable housing direction.

If enacted, SB 1045 would dramatically expand the universe of people who can call for a judicial review of zoning actions. Ultimately, this would mean tying up development projects – including those for affordable and market-rate housing – in unnecessary and costly litigation, simply because someone in the community may have, among other things, an issue with the aesthetics. In an environment where leaders at all levels of government are taking bold action to create more affordable housing, opening the door to potentially frivolous lawsuits and unhelpful roadblocks is counterproductive.

Additionally, while SB 1045 seemingly attempts to carve out affordable housing projects from the scope of this legislation, it must be noted that 1-1308 of the Local Government Article is not inclusive of all affordable housing projects. This would mean that someone could newly challenge other affordable and market-rate housing projects, while Maryland still grapples with this historic affordable housing crisis.

Counties remain committed stakeholders in paving the way for all Marylanders to find an affordable place to call home. SB 1045 would ultimately slow some of the efforts underway to target these problems, and for this reason, MACo urges the Committee to issue SB 1045 an **UNFAVORABLE** report.

SB1045 Zoning Judicial Review Oppose.pdf
Uploaded by: Leslie Dickinson
Position: UNF

Disability Rights Maryland

Empowerment. Integration. Equality.

1500 Union Ave., Suite 2000, Baltimore, MD 21211
Phone: 410-727-6352 | Fax: 410-727-6389
www.DisabilityRightsMD.org

Disability Rights Maryland

SB 1045 - Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review
Hearing before the Senate Education, Energy, and the Environment Committee
March 7, 2024 at 1:00PM
Position: OPPOSE (Unfavorable)

Disability Rights Maryland (DRM) is the federally designated Protection & Advocacy agency[1] in Maryland mandated to advance the civil rights of people with disabilities. One of DRM's goals is to end the unnecessary segregation and institutionalization of Marylanders with disabilities. To that end, DRM's Housing and Community Inclusion team works to expand housing opportunities for Marylanders with disabilities and to maintain housing stability to ensure people with disabilities can participate fully in all aspects of community life, and have equal access to opportunities.

SB 1045, if enacted, would expand the right to judicial review of a board of appeals decision or a zoning action to corporations, unincorporated associations or any other organization, which consists of two or more members joined by mutual consent for a common purpose. The right to judicial review would include review of a jurisdiction's comprehensive plan or rezoning action of a legislative body, broadly increasing standing to challenge all types of land use decisions. Unlike administrative decisions that are based on evaluating facts and creating a record for judicial review, legislative enactments are based on policy considerations and are generally either not reviewable by the court or reviewed on a limited basis.

Maryland is experiencing a housing crisis.[2] We have a shortage of 120,000 housing units, with more than 51% of Maryland renters being cost-burdened, spending 30% or more of their wages on housing-related costs.[3] We need to be encouraging housing development, including accessible, affordable housing options, not enacting laws that create more barriers to housing development. There has been increased recognition that zoning ordinances are contributing to the lack of housing and the ensuing housing crisis in this Country, including in Maryland.

This expansion of judicial review will likely result in litigation and delay, and would mean tying up development projects − including those for affordable and market-rate housing − in unnecessary and costly litigation. While SB1045 indicates a carve-out for affordable housing projects from the scope of this legislation, § 1-1308 of the Local Government Article does not include all affordable housing projects. The door would be open for an association or other two-member organization to newly challenge other affordable and market-rate housing projects, while Maryland is in the midst of a historic affordable housing crisis.

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[1] For more information on Protection & Advocacy agencies, see NATIONAL DISABILITY RIGHTS NETWORK, https://www.ndrn.org/ (last visited June 18, 2021).
[2] *See* National Low-Income Housing Coalition, https://nlihc.org/gap/state/md (last visited Feb. 16, 2024).
[3] *See* Governor Moore's Renters' Rights and Stabilization Act of 2024

SB 1045 has the potential to wreak havoc in the zoning and land arena, to increase litigation in an overwhelmed court system, and to exacerbate Maryland' housing crisis.

We urge the Committee's report of Unfavorable on SB 1045.

For more information, please contact:

Leslie Dickinson (she/her)
Attorney
Disability Rights Maryland
(443)-692-2488
LeslieD@DisabilityRightsMD.org

MBIA Letter of Opposition SB 1045.pdf
Uploaded by: Lori Graf
Position: UNF

MARYLAND BUILDING INDUSTRY ASSOCIATION
11825 West Market Place | Fulton, MD 20759 | 301-776-6242

March 6, 2024

The Honorable Brian Feldman
Chairman, Senate Education, Energy, and the Environment Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

RE: MBIA Letter of Opposition SB 1045 Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review

Dear Chairman Feldman,

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **SB 1045 Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review**. MBIA **opposes** the Act in its current version.

This bill proposes amendments to zoning-related judicial review processes in Maryland, specifically focusing on charter counties and Baltimore City. It aims to broaden the scope of who can request judicial review in these jurisdictions. While we acknowledge the importance of ensuring appropriate avenues for judicial review, we have concerns that this legislation will be create additional hurdles with regard to land use approvals such as site plans, special exceptions, and variances. We also have concerns with the legislation when it comes to the effect it could have on legislative land use approvals such as comprehensive zoning that is conducted on the local level.

The bill would exacerbate an already complex land use process that the state and localities have in place. The judicial review of such approvals is necessary to ensure compliance with state and local laws, however the right to seek judicial review is limited to those who are nearby such projects and specially impacted. This bill would open the opportunity for activist groups to oppose housing development projects and prevent them from moving forward.

Comprehensive zoning is a necessary process that local jurisdictions undertake in order to address the needs of the county. It is a broader effort focused on the needs of the entire jurisdiction and is on a larger scale than ordinary administrative actions. Boarder judicial review on comprehensive zoning would undermine the local jurisdictions ability to use this necessary power.

The proposed legislation's broad applicability to various types of organizations and associations could significantly alter the landscape of zoning disputes. The standing requirements for legislative actions, as currently set forth in existing case law, have been carefully developed over time and should remain under the purview of the courts for further refinement. Implementing these provisions could jeopardize the integrity of well-reasoned court decisions accumulated over the years.

For these reasons, MBIA respectfully urges the Committee to give this measure **an unfavorable** report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

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

SB1045-EEE-OPP.pdf
Uploaded by: Nina Themelis
Position: UNF

BRANDON M. SCOTT
MAYOR

Office of Government Relations
88 State Circle
Annapolis, Maryland 21401

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.

SB1045 -Zoning - Board of Appeals Decisions or Zon

Uploaded by: Tom Ballentine

Position: UNF

NAIOP
MARYLAND CHAPTERS
THE ASSOCIATION FOR COMMERCIAL REAL ESTATE

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 aggrievement 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.*"

U.S. Mail: 12 Francis St. Annapolis, MD 21401 **Phone:** 410.977.2053 **Email:** tom.ballentine@naiop-md.org

- 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.

SB 1045 _realtors_unf.pdf
Uploaded by: William Castelli
Position: UNF

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

Position: Unfavorable

The Maryland REALTORS® oppose SB 1045 which expands legal standing in all board of appeals decisions, zoning actions, rezoning actions or comprehensive plans.

Maryland faces a significant housing crisis that is measured not only in the 150,000-unit shortage but also in the average residential price assessment increase of 25.6% this past year.

Although Maryland standing rules are more limited than federal standing rules, Maryland standing rules are truer to the purpose of legal standing by granting standing to parties whose personal or property interest is directly impacted in a way different from the general public. Standing rules were created to ensure courts deal with particularized harms to individuals rather than more generalized harms to the public which is the realm of Legislatures.

As to the bill, the REALTORS® are concerned over the definition of an "injury of fact" which includes a negative impact to: aesthetic and recreational interests as well as a negative impact to a person's use and enjoyment of a natural resource. Expanding standing based on aesthetic interests creates a very broad category of challenges that would be difficult for a legislative body to plan for when developing zoning and comprehensive plans. This provision would give opponents of any development a useful tool to kill projects through judicial delay. Any aggrieved person or association could challenge any decision based on whether the legislative action results in projects that are visually unappealing.

When broadening standing rules are added to the already difficult process of obtaining permits for projects, the potential negative impacts to housing are concerning. Housing projects are always objected to even if the project conforms to local zoning and use restrictions. "Death by delay" is a real threat to many projects and increases the significant and growing costs of building affordable housing.

For these reasons, the REALTORS® recommend an unfavorable report.

For more information contact lisa.may@mdrealtor.org or christa.mcgee@mdrealtor.org