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Disability Rights Maryland

HB 417 - Baltimore County - Nuisance Actions - Community Association

Hearing before the House Environment and Transportation Committee

Feb. 27, 2024 at 1:00PM

Position: OPPOSE (Unfavorable)

Disability Rights Maryland (DRM) is the federally designated Protection & Advocacy agency¹ 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.

A. HB417 would expand the scope of "Community Association" and an Association's right to file a Nuisance action in Baltimore County

As proposed, "Community association" means a Maryland nonprofit Association, corporation, or "other organization" that is composed of residents of a community defined by specific geographic boundaries in the bylaws or charter of the Community association within which the nuisance is located. The only requirements are that the Association is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement, and the Association is exempt from taxation under § 501(c)(3), § 501(c)(4) or § 528 of the Internal Revenue Code.

"Specific geographic boundaries" is not defined, and there is no requirement that the boundaries be contiguous or encompass an actual neighborhood. Moreover, HB417 doesn't establish any conditions or geographic restrictions for membership of a Community Association, and doesn't require a minimum number of residents or households to form a Community association. Rather, an Association itself would have the right to determine (to self-define), just by including in its bylaws or charter, the "specific geographic boundaries" that it "covers" with no objective limits on or criteria for such boundaries.

Under current law, while a Community Association can define specific geographic boundaries in its bylaws, the community association must satisfy certain conditions to be eligible to bring a nuisance action under the statute. The community must consist of 40 or more individual households, 20% of which must be members of the association, with a minimum of 25 households. A condition of membership includes the payment of monetary dues, and, significantly, the right to file a nuisance lawsuit requires the association to have existed for at least one (1) year; it must also be exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code. (*See* Real Prop. Art. § 14-125(a)(2)).

¹ For more information on Protection & Advocacy agencies, see NATIONAL DISABILITY RIGHTS NETWORK, <https://www.ndrn.org/> (last visited June 18, 2021).

HB417 repeals almost every condition in current law which must be met for the purpose of a “Community Association” filing a nuisance action.

B. HB417 expands the definition of “Local code violation” from a nuisance to include a violation under Article 35 of the Baltimore County Code.

Under current law, “Local code violation” means a violation under Title 22. “Nuisances” of the Baltimore County Code 1988.² HB417 would expand the definition of “Local code violation” to encompass Article 35 (Building and Housing) of the Baltimore County Code.

HB417 would, thus, allow a community association to seek injunctive and other equitable relief in the Circuit Court for Baltimore County for abatement of a “nuisance” which would potentially interfere with the Department of Permits, Approvals and Inspections (the “Department”). The Department, which employs licensed code enforcement personnel, engineers or those with similar expertise, undertakes inspections, is authorized to secure buildings, walls, structure, or superstructure that are not constructed, altered or repaired in compliance with the code; and may inspect and regulate the safe construction, erection, repair, alteration, remodeling, removal, or demolition, in any manner, of all or any part of a private or public building or structure. (*See* Art. 35, § 2-203). Moreover, the Department issues building permits under Article 35, which in accordance with HB417 could be challenged by a community association as a “nuisance” under this expansive definition.

C. Conclusion

HB417 may have unintended consequences; it would eliminate objective criteria of what it means to be a community association in Baltimore County and expand the definition of “nuisance” encroaching further upon county agencies with expertise in code enforcement, permitting and engineering.

Under HB417, a few Baltimore County residents could form a community association and include in its bylaws or charter “specific geographic boundaries” anywhere within Baltimore County, regardless of where its members live or whether a community association already exists within the boundaries it has adopted.

The new community association could be diametrically opposed to the mission and goals of an existing association, but under HB417 could bring a nuisance action, regardless of whether members of the association are impacted by the alleged nuisance; consequently, the bill provides Standing to community associations even where the majority of members would not ordinarily have standing to sue.

Because HB417 would repeal the requirement that a community association be in existence for at least one year before filing a nuisance lawsuit, and would also repeal the bond requirement, community associations could be formed for the sole purpose of targeted litigation against a specific entity or resident, potentially opening the door to conflicts between associations, and increasing pointless and expensive litigation.

² “Nuisances” has been re-codified at Article 13, Title 7 of the Baltimore County Code.

By expanding the definition of “nuisance” to include Building and Housing under Article 35, HB417 sets the stage for a community association (with no criteria for membership) to replace the expertise of County code enforcement, permitting professionals and engineers with that of a circuit court judge.

This expansive definition of “nuisance” would allow a community association to challenge a building permit already issued by the Department pursuant to Article 35, and in accordance with HB417, could seek injunctive and other equitable relief in the circuit court for abatement of a “nuisance.” Even if the association could not prove the particulars of the “nuisance,” and the court dismissed the case, the cost and delay would have an impact.

Residents in Baltimore County have experience in preventing or delaying development, even at late stages of the process.³ As one example, a group of residents appealed an ALJ decision in favor of the Red Maple Place development in Towson to the Board of Appeals (BOA), which overturned the ALJ’s decision. The circuit court overturned the BOA’s decision, and the case is now at the Appellate court. Every county agency involved with Red Maple Place approved it prior to the ALJ hearing, who issued her order approving Red Maple on March 8, 2021.

HB417 would be another tool for certain residents to create community associations to bypass county agencies, and to challenge permits or developments that are in process, which the incredibly broad definitions of both “community association” and “nuisance” will allow them to do.

Baltimore County leaders are well aware of the need for investment, redevelopment, and affordable housing as indicated by the county executive’s proposed mixed-use bill, that he recently had to withdraw.

<https://www.thebaltimorebanner.com/politics-power/local-government/olszewski-withdraws-development-bill-U2QAUGN3QNDVDEOFLGDSOHQLLI/>

HB417 is not necessary and does not fix anything, but it has the potential to create negative outcomes, including to prevent or delay much needed investment, redevelopment and affordable housing development in Baltimore County.

We urge the Committee’s report of Unfavorable on HB 417.

For more information, please contact:

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³ <https://www.thebaltimorebanner.com/baltimore-county/plan-for-affordable-housing-at-red-maple-place-in-east-towson-can-move-forward-judge-rules-62QV6CIDIFEHBD5PBI6EB6S52A/>