

# **HB1449F Support Oral Testimony - March 4 2024.pdf**

Uploaded by: Dan Tootle

Position: FAV

I am Dan Tootle and I am speaking in favor of HB 1449F.

I am a resident of the Round Bay community in Severna Park which is part of two watershed areas, the Magothy and Severn Rivers. For the past two years our community has been impacted by the planned development of two land plats within our community that involve the destructive development of two very steep slope lots, both well within the Anne Arundel County Critical Area, and within 1,000 ft of the Severn River. The two lots of concern have storm water drainage to both of the rivers.

Despite the obvious and well documented adverse impact that development of these two lots will have to the rivers, and to the adjacent community residents, Anne Arundel County, under litigious pressure from the developer, has allowed development to go forward, despite concerted effort on the part of community residents, the Magothy and Severn River Associations, by approving variances to existing county law governing protection for such property.

During the administrative hearing and subsequent Board of Appeals hearing, community residents and the Associations have found ourselves barred from effectively mitigating damage resulting from such development due to a lack of standing to the Appeals Board under existing interpretation (by Anne Arundel County administration) to have a voice in this matter.

Hopefully, the passage and adoption of HB 1449F, along with its cross-filed SB 1045 bill will establish such standing that will provide a remedy to unsustainable and unfair situations such as encountered for the Mt. Misery property development for community residents and environmental protection organizations.

The current lack of standing situation that prevails in such matters now needs to be corrected by passage of HB 1449F in order to provide a balance of power to the prevailing and overriding property ownership rights that our county administration considers as dominant.

# HB 1449 - Dupcak.pdf

Uploaded by: Danielle Dupcak

Position: FAV

Written Testimony of Danielle Dupcak  
Round Bay Resident  
624 Old County Road  
Re: HB1449F

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 fighting the development of two, 5,000+ sq ft homes on Mount Misery from the beginning. That the developer has gotten as far as he has is a tragedy. The fact that a second grading permit is now pending on the adjacent lot without there having been a public hearing of any kind is outrageous. Our system is flawed. This bill will help.

From day one, we were denied a voice due to extensive delays related to the pandemic and a technicality with filing the appeal. At the Board of Appeals hearing, we were not allowed to speak. This came as quite a shock, as we had been instructed in writing by the Board Clerk the following: "the Board doesn't look at the motion or the response ahead of time. The hearing set for August 25th (2021) will allow Mr. Devlin to present his motion to the Board and you and Mr. and Mrs. Dupcak should appoint one person to argue against the motion. The Board should vote at that time to hear the case or dismiss it." Despite these instructions, we were not in fact allowed to argue against the motion. We were not given a voice. We were not allowed to lodge any of our concerns.. We were deemed not to have "standing" and were rudely dismissed, along with our case against the original granting of the variance. We had valid concerns and documented evidence to present but were not allowed to make our case.

There are so many twists and turns to the Mount Misery story, but the bottom line is that a 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, in part, because a Bill like 1449 was not in place to protect Round Bay residents and our community. Legislation is needed so that persons, like myself, aggrieved by a Board of Appeals decision, who has clear "skin in the game," has some avenue of recourse.

A Bill like this is also needed so that organizations like the Magothy River Association or Severn River Association, which do endless work to preserve and protect our watershed, can rightfully continue to protect our rivers from irresponsible development by raising their own concerns. These organizations should also have "standing."

While I understand Anne Arundel County is a development-by-right county, existing homeowners and community members have rights too. Rights that should be weighed equally. Developers have the right to build within the constraints of the law, but they are NOT

guaranteed the right to build wherever they want and whatever they want regardless of the impact. It is not a county's responsibility to salvage a bad land investment. Unfortunately, when variances and modifications are doled out, our existing laws become moot. Developers claim hardship when they aren't granted the same exceptions as another. When exceptions are made, citizens/organizations should have the right to appeal them. No two lots are the same and each should be considered within the framework of our existing laws.

Therefore, based on my experience with Mount Misery, I am in support of House Bill 1449, and hope you will vote in its favor. Thank you.

**HB1449 LEHMAN TESTIMONY.pdf**

Uploaded by: Mary Lehman

Position: FAV

DELEGATE MARY A. LEHMAN  
*Legislative District 21*  
Prince George's and  
Anne Arundel Counties

Environment and Transportation  
Committee



The Maryland House of Delegates  
6 Bladen Street, Room 163  
Annapolis, Maryland 21401  
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Mary.Lehman@house.state.md.us

## THE MARYLAND HOUSE OF DELEGATES ANNAPOLIS, MARYLAND 21401

### **HB 1449 – Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review SUPPORT**

GOOD AFTERNOON CHAIR KORMAN, VICE CHAIR BOYCE AND ESTEEMED COMMITTEE MEMBERS. FOR THE RECORD, I'M DELEGATE MARY LEHMAN, REQUESTING FAVORABLE CONSIDERATION OF HB 1449 – ZONING – BOARD OF APPEALS DECISIONS OR ZONING ACTIONS – JUDICIAL REVIEW.

THE BILL WILL APPLY TO SPECIFIC DIVISION I CHARTER COUNTIES ONLY: ANNE ARUNDEL, BALTIMORE, HARFORD, FREDERICK, HOWARD COUNTIES.

**NOTE:** THE STATE'S TWO LARGEST COUNTIES, MONTGOMERY AND PRINCE GEORGE'S ARE DIVISION II CHARTER COUNTIES SO THE BILL DOES NOT APPLY TO THEM.

THIS BILL WILL ALLOW CIVIC ASSOCIATIONS, UNINCORPORATED COMMUNITY ORGANIZATIONS, AND OTHER GROUPS TO FILE A REQUEST FOR JUDICIAL REVIEW OF A DECISION OF A BOARD OF APPEALS OR ZONING ACTION, IF ONE OF THEIR MEMBERS IS AGGRIEVED. TO BE ABLE TO FILE A COURT CHALLENGE, AN ORGANIZATION MUST CONSIST OF TWO OR MORE MEMBERS WITH A COMMON PURPOSE, AND AT LEAST ONE MEMBER MUST HAVE STANDING, WHICH MEANS HE OR SHE WOULD BE DIRECTLY AGGRIEVED BY A ZONING ACTION.

THE BILL SPECIFICALLY DEFINES WHAT IT MEANS TO BE AGGRIEVED, ALSO KNOWN AS INJURY IN FACT.

FIRST, THE INDIVIDUAL HAS TO BE IN CLOSE PROXIMITY TO THE PROJECT – TYPICALLY LESS THAN 800 FEET. SECONDLY, "INJURY IN FACT" INCLUDES:

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.

THE AGGRIEVED PERSON ALSO MUST DEMONSTRATE THAT SHE OR HE WOULD SUFFER ADVERSE EFFECTS ON PERSONAL HEALTH, THE ENVIRONMENT OR THE AESTHETIC APPEARANCE OF THE AGGRIEVED PERSON'S PROPERTY. UNDER THIS TYPE OF STANDING, AN ORGANIZATION THAT HAS AN AGGRIEVED MEMBER CAN CHALLENGE LAND USE DECISIONS IN COURT, WHETHER IT IS A COMPREHENSIVE PLANNING OR REZONING ACTION.

THE BILL IS INTENDED TO HELP CIVIC ASSOCIATIONS, COMMUNITY ORGANIZATIONS AND INCORPORATED AND UNINCORPORATED GROUPS TO BRING LEGAL CHALLENGES ZONING APPEALS.

THE IDEA FOR THE LEGISLATION STEMS FROM A LAND USE CASE IN SEVERNA PARK CONCERNING A PROPOSED DEVELOPMENT ON A HISTORIC PROPERTY KNOWN AS MT. MISERY. THIS WAS A UNION ARMY FORT DURING THE CIVIL WAR THAT SITS ON A HILL OVERLOOKING THE SEVERN RIVER. THE TOP OF THE HILL IS KNOWN AS MT. MISERY. THE MAGOTHY RIVER ASSOCIATION HAS CONCERNS ABOUT LOSING THE HISTORIC SIGNIFICANCE OF THE AREA AND, BECAUSE OF THE STEEP GRADE OF THE PROPERTY, THE ASSOCIATION ALSO HAS CONCERNS ABOUT EROSION THAT WILL LIKELY OCCUR WITH THE REMOVAL OF TREES AND THE DISTURBANCE OF SOIL.

HOWEVER, UNDER CURRENT STANDING LAW FOR ANNE ARUNDEL COUNTY, THE ASSOCIATION CANNOT FILE A LEGAL CHALLENGE IN CIRCUIT COURT.

THIS BILL WOULD PERMIT GROUPS LIKE THE MAGOTHY RIVER ASSOCIATION TO ASSERT THE LEGITIMATE INTERESTS OF ITS MEMBERS, AND THUS ALLOW CITIZENS TO POOL THEIR RESOURCES AND POLITICAL CLOUT TO HAVE THEIR DAY IN COURT.

THANK YOU AND I ASK YOUR FAVORABLE CONSIDERATION OF HB 1449.



**MBIA Letter of Opposition HB 1449.pdf**

Uploaded by: Lori Graf

Position: UNF

March 5, 2024

The Honorable Marc Korman  
Chairman, Environment & Transportation Committee  
Room 251, House Office Building  
Annapolis, Maryland 21401

**RE: MBIA Letter of Opposition HB 1449 Zoning – Board of Appeals Decisions or Zoning Actions –  
Judicial Review**

Dear Chairman Korman,

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **HB 1449 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 us 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](mailto:lgraf@marylandbuilders.org).

cc: Members of the Environment & Transportation Committee

**HB1449-ET\_MACo\_OPP.pdf**

Uploaded by: Michael Sanderson

Position: UNF



## House Bill 1449

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

MACo Position: **OPPOSE**

To: Environment & Transportation Committee

Date: March 5, 2024

From: Dominic J. Butchko and Michael Sanderson

The Maryland Association of Counties (MACo) **OPPOSES** HB 1449. 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, HB 1449 is the antithesis of this positive momentum and will move Maryland in an anti-affordable housing direction.

If enacted, HB 1449 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 HB 1449 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. HB 1449 would ultimately slow some of the efforts underway to target these problems, and for this reason, MACo urges the Committee to issue HB 1449 an **UNFAVORABLE** report.

# **HB1449 -Zoning - Board of Appeals Decisions or Zon**

Uploaded by: Tom Ballentine

Position: UNF



March 1, 2024

The Honorable Marc Korman, Chair  
House Environment and Transportation Committee  
House Office Building, Room 251  
6 Bladen St., Annapolis, MD 21401

**Oppose: HB 1449 – Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review**

Dear, Chair Korman 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 HB 1449.

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 an administrative decision of a board of appeals and legislatively enacted zoning actions which include 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. Their 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 anyone, including out of state residents who recreate on the Chesapeake Bay, to claim potential harms and appeal administrative decisions on individual development site plans, special exceptions, and variances.
- Today, judicial review of development decisions is usually limited to those who are nearby and can show they are impacted in a way that is different than the general public. This bill would allow any person to access the court based on their definitions of harm to their own environmental or aesthetic values.
- The same universe of associations and individuals is also authorized to appeal legislative enactments that adopt comprehensive rezoning maps and comprehensive land use plans. Unlike administrative decisions that are based on evaluating facts and application of regulatory requirements, legislative enactments are based on policy considerations and are generally either not reviewable by the court or reviewed on a limited basis.
- Opening the development review and approval process and the land use planning process to the broad universe of people authorized to appeal in the bill would make implementation of land use and zoning plans perilous and subject to constant delays, second guessing and judicial review. Difficult land use policy decisions made by elected officials would be challenging to implement at the administrative level. 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 HB 1449**

Sincerely,

A handwritten signature in blue ink that reads 'Tom Ballentine'.

Tom Ballentine, Vice President for Policy  
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: House Environment and Transportation Committee Members  
Nick Manis – Manis, Canning Assoc.

**HB 1449 \_realtors\_unf.pdf**

Uploaded by: William Castelli

Position: UNF



**House Bill 1449 – Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review**

**Position: Unfavorable**

The Maryland REALTORS® oppose HB 1449 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](mailto:lisa.may@mdrealtor.org) or [christa.mcgee@mdrealtor.org](mailto:christa.mcgee@mdrealtor.org)**