

**INTER-OFFICE MEMORANDUM PRINCE GEORGE'S
COUNTY, MARYLAND
ZONING HEARING EXAMINER OFFICE**

TO: Jackie Brown, Director
Planning, Housing, and Economic Development Committee

FROM: Maurene Epps McNeil
Chief Zoning Hearing Examiner

Joyce Nichols
Zoning Hearing Examiner

DATE: May 17, 2023

RE: CB-54-2023

Thank you for allowing the Zoning Hearing Examiners the opportunity to review the legislation. As drafted, the bill raises a few concerns.

The amendment to Section 27-3406 found on page 2 of the bill will require the Technical Staff to summarize each issue raised by the opposition and make it part of the record. The Zoning Ordinance requires individuals to express in writing to the Zoning Hearing Examiner, or in person at a hearing, their intent to become Persons of Record. Once they become Persons of Record, they can testify and note their position on a particular application. Most importantly, they do these things under oath, where credibility may be weighed, and where their testimony is subject to cross-examination. It would, therefore, be improper to allow the "opposition" (who may or may not become Persons of Record) to submit their concerns at the time of Technical Staff Review and have Staff include them in the record. As a practical matter, the Technical Staff may not even be aware of any opposition when it prepares its report. Finally, if the language is included, it should be revised to direct staff to gather any lay statements since unopposed individuals sometimes wish to have questions addressed or request that certain conditions be imposed.

When the ZHE reviews an application, it acts as an adjudicative body. Its findings of fact must address how an application does or does not comply with all applicable criteria. (Bucktail LLC v. County Council of Talbot County, 352 Md 530 (1999)) In other words, the findings must include the facts relied upon in reaching the conclusion. The ZHE generally summarizes all credible, relevant evidence presented by Applicant and its witnesses, those opposed to the request and those who simply wish to testify about the request. It then provides a conclusion that makes specific reference to all relevant

evidence (or lack thereof) and addresses the criteria that must be satisfied. The ZHE also prepares the record of exhibits, an exhibit list that describes each, and transcripts of all hearings held on a particular application. Since COVID and the resulting pivot to a virtual world, the ZHE hearings have been streamed and taped, effectively memorializing all arguments and testimony of all who appear at the hearings. Thus, the spirit of the bill is already addressed, and requiring a specific listing of all exhibits submitted by the opposition and a summary of each person's objections and argument would be redundant. It could also raise an argument that a decision is illegally based on plebiscite (that is, on the number of individuals for or against the request).

Nonetheless, if the sponsors wish to add the additional language in Sections 27-3408 and 27-3409, the bill should be revised as follows (using the correct terminology for the appropriate section):

“When recommending/making a decision, the advisory/decision-making board/body or official shall include a summary of the testimony and evidence presented by all parties and persons of record in each evidentiary case that responds to the objections and arguments made.”

This clarifies that the summary must address everyone's position, which would be required under general tenets of fairness and due process.