



July 20, 2017

## TECHNICAL STAFF REPORT

*Planning Board Meeting on August 3, 2017*

**Case No./Petitioner: ZRA-173 – Christopher J. Alleva**

**Request:** Amend Section 130.0.A. in the Howard County Zoning Regulations to define eligibility standards for entities to be considered an “aggrieved person” in a Hearing Authority appeal case, and also to specify that decisions of the Planning Board may be appealed to the Hearing Authority.

### **I. BACKGROUND**

The 1977 Zoning Regulations established the first “General” section (121.A) pertaining to the Board of Appeals. The following provisions in Section 121.A related to appeals to the Board of Appeals were similar to the current text:

“Appeals to The Board of Appeals may be taken by any person aggrieved, or by any officer, department, board or bureau of the County affected by any decisions of the Office of Planning and Zoning. Such appeal shall be filed not later than fifteen days from the date of the action of the Office of Planning and Zoning and shall state the reasons for the appeal.”

In the 1985 Zoning Regulations, the section became Section 125.A., and the appeals process remained the same except that the appeal period was extended to 30 days. In the 1993 Zoning Regulations, the only change was the section became 130.A.

The 2004 Comprehensive Zoning Plan changed the title of Section 130.0 to “Hearing Authority”, all previous references to the Board of Appeals were changed to “Hearing Authority”. Additionally, Section 130.A.2 was established to specify that Section 16.302 of the Howard County Code authorizes the Hearing Examiner to hear and decide certain matters, and that “Hearing Authority” refers to both the Board of Appeals and the Hearing Examiner. There were no changes to Section 130.A in the 2005 Continuation of the Comprehensive Zoning Plan.

The 2013 Comprehensive Zoning Plan changed the overall section to Section 130.0, changed Section 130.A.3. to specify that the valid appeal period was 30 calendar days, and clarified that when an appeal deadline falls on a weekend or holiday, the appeal shall be filed prior to the weekend or holiday.

## II. DESCRIPTION AND EVALUATION OF PROPOSAL

**DPZ consulted with the Office of Law regarding the legal sufficiency of the proposed amendment. The Office of Law identified legal issues, as described in the analysis below.**

### 1. SECTION 130.0.A: GENERAL

**Section 130.0.A.3– Add new text to specify that decisions of the Planning Board may be appealed to the Hearing Authority, also to add a reference to the proposed new Section 130.0.A.4.**

DPZ recommends denial of the amendment

The proposed amendment conflicts with Section 16.900(j)(2)(iii) of the Howard County Code, which addresses the appeal process for persons aggrieved by any decision of the Planning Board:

(iii) Any person specially aggrieved by any decision of the Planning Board and a party to the proceedings before it may, within 30 days thereof, appeal said decision to the Board of Appeals in accordance with section 501 of the Howard County Charter. For purposes of this section the term "any person specially aggrieved" includes but is not limited to a duly constituted civic, improvement, or community association provided that such association or its members meet the criteria for aggrievement set forth in subsection 16.103(b) of this title.

Section 16.900(j)(2)(iii) already provides for appeals of Planning Board decisions to the Board of Appeals. Therefore, approval of this amendment to Sections 130.0.A.3. and 4. (below) of the Zoning Regulations would set up a conflict between this section and Section 16.900(j)(2)(iii). Through the Zoning Regulation Amendment process, a member of the public may only propose amendments to the Zoning Regulations not the Howard County Code. Additionally, Section 130.0.A. concerns appeals from decisions of the Department of Planning and Zoning not appeals from Planning Board decisions, so Section 16.900(j)(2)(iii) is the appropriate location in Howard County's laws for this type of amendment not Section 130.0.A. of the Zoning Regulations.

### 2. SECTION 130.0.A: GENERAL

**Section 130.0.A.4– Add new text in a new Section 130.0.A.4. for a new definition of the term “any person aggrieved”, as that term is used in Section 130.0.A.3.**

DPZ recommends denial of the amendment

As noted above, Section 16.900(j)(2)(iii) already addresses the issue concerning appeals of Planning Board decisions by persons who are specially aggrieved by such a decision. In the Howard County Code, a specific definition does not exist for the term “specially aggrieved”. Therefore, the term “specially aggrieved”, as it is used in Section 16.900(j)(2)(iii), must be defined based on the commonly accepted legal meaning for aggrievement found in Maryland case law.

As understood in case law, a person aggrieved by a judgment or decision is one who has a specific financial or property interest that is affected by the judgment or decision in a manner that is different or greater than the general public.

The Petitioner's proposed changes to Sec. 130.0.A. of the Zoning Regulations can only apply to decisions by DPZ as noted in Section 1 above. According to the Howard County Office of Law, "the first two criteria are basically a description of the aggrievement standard provided in case law and are therefore superfluous. The third criterion ("any civic association, etc.") is very broad and vague ("in the vicinity of the property. . ."). The fourth and final criterion is so broad as to exclude no one from being able to appeal and also incorrectly references the Planning Board. This last criterion is not criterion for aggrievement at all- anyone could appeal who merely signs up to testify."

### III. GENERAL PLAN

The Petitioner did not provide a justification statement concerning how the proposed amendments will be in harmony with the General Plan. The statement that is provided, "This fixes errors in the County Code and ensures the regulations meet their legislative purpose.", does not reference any General Plan policies. As noted above, the proposed amendment cannot and does not "fix" the County Code but instead creates conflict between the Zoning Regulations and the County Code as to the authority to appeal a Planning Board decision and the standard for aggrievement to appeal.

PlanHoward 2030 contains several policies and implementing actions concerning evaluating the Zoning Regulations on certain issues and for amending the Zoning Regulations based upon the results of those evaluations. However, it does not contain any policies related to appeals of Planning Board decisions.

### IV. AGENCY COMMENTS

In response to the request for agency comments on ZRA-173, the Bureau of Environmental Health, the Development Engineering Division, the Department of Inspections, Licenses and Permits, the Department of Recreation & Parks, and the Department of Fire and Rescue Services all responded that they have no comments.

### V. RECOMMENDATION

For the reasons and legal issues noted above, the Department of Planning and Zoning recommends that ZRA-173 be **DENIED**.

Approved by:

 7/17/17  
Valdis Lazdins, Director Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

## ZRA-173 - Exhibit A (Petitioner's Proposed Text)

(CAPITALS indicate text to be added; [[brackets indicate text to be deleted]].)

### SECTION 130.0.A:

#### A. General

1. The Hearing Authority has been established pursuant to Section 501 of the Howard County Charter.
2. Section 16.302 of the Howard County Code authorizes the Hearing Examiner to hear and decide certain matters within the scope of these Regulations. The Howard County Code specifies which matters are within the jurisdiction of the Hearing Examiner. The term "Hearing Authority" is used in these Regulations to refer to both the Board of Appeals and the Hearing Examiner.
3. Appeals to the Hearing Authority may be taken by any person aggrieved, AS DEFINED IN (4.) BELOW or by any officer, department, Board or bureau of the County affected by any decisions of the Department of Planning and Zoning OR DECISIONS OF THE PLANNING BOARD. Such appeal shall be filed not later than 30 calendar days from the date of the action of the Department of Planning and Zoning and shall state the reasons for the appeal. Appeals with a deadline falling on a weekend or holiday must be filed prior to that deadline.
4. AN AGGRIEVED PERSON IS DEFINED AS ANY PROPERTY OWNER THAT IS ADJOINING AND CONFRONTING THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR ANY PROPERTY OWNER WITHIN SITE [sic] SOUND OR SMELL OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR ANY CIVIC, HOMEOWNER'S ASSOCIATION OR PROPERTY OWNER'S ASSOCIATION IN THE VICINITY OF THE PROPERTY THAT IS THE SUBJECT OF THE ACTION OR DECISION; OR ANY PERSON SIGNED IN AT THE PLANNING BOARD MEETING OR HEARING FOR THE PROPERTY THAT IS THE SUBJECT OF THE DECISION.
- [[4.]]5. Except as herein provided, if an application is disapproved by the Hearing Authority, thereafter the Hearing Authority shall take no further action on another application for the same or substantially the same proposal on the same premises until after 24 months from the date of the last disapproval; provided however, that a subsequent application for the same or substantially the same proposal on the same premises may be filed at the expiration of six months of the date of the hearing last held if accompanied by an affidavit setting forth new and different grounds, which the applicant believes would be sufficient for the approval of the proposal contained in the application. After having considered the said application and the facts alleged in the accompanying affidavit, the Hearing Authority may, after the notice required herein, grant another hearing, provided it is satisfied that new and different grounds or conditions exist which would have a bearing on the consideration of said proposal and would justify another hearing.