City of Annapolis

Planning Commission
Department of Planning & Zoning
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November 14, 2019

To: Annapolis City Council
From: Planning Commission
Re: Findings for Ordinance O-34-19: Planning and Zoning – Appeal Procedures

SUMMARY

This ordinance is part of a continuing endeavor of modifying and editing parts of the Code to make the processes therein clearer and simpler.

The ordinance, if enacted as proposed by the Planning Commission:

- Clarifies when an appeal can be filed;
- Clarifies "standing" requirements;
- Codifies that the hearing is *on the record*, i.e. the Board does not need to recreate the facts and arguments made in the course of the Department of Planning & Zoning's decision; rather, it begins with a complete record but permits a supplementation of that record so as to focus on relevant issues;
- States that the appellant has the burden of proof.

ANALYSIS

In this case, two recent cases before the Board of Appeals highlighted the need to address the appeals process before the Board.

First, the Commission recommends that any appeal be "on the record" rather than "de novo." This means the appellant need not present again what has already been presented to the Department for its decision. The record before the Department is available to the Board and the public before the hearing on the appeal. With this practice, the Board can focus more efficiently on solely the important issues.

Second, the Commission recommends that an appellant be guided to state specific grounds in their appeal but that the appellant not be formally limited to those grounds. Suggested language is stated below.

There are several other aspects to this legislation which were explained to the Planning Commission.

First, an appeal can be generated only upon an application for appeal of a final decision by the Director of P&Z. Minor or intermediate actions by the Director are not appealable. However, in the rare case, an appeal over a determinative issue can be had after an application is made for an interlocutory administrative decision. For example, if a zoning code interpretation by the

Director will determine if an underlying application for construction can move forward, a person can file an application for that determination alone and that decision can be appealed. In the ordinary case, an appeal is only made from a final decision on an application.

Second, only a person "aggrieved" by the Director's decision can file an appeal. "Aggrievement" has specific legal meaning based in Maryland case law. In short, a person must stand to suffer specific harm to have the standing to file an appeal.

Third, the procedures before the Board of Appeals are stated in the Board's rules. Slight modifications to those rules are suggested below. The Board's rules give great discretion to the Chairman. Relevant here is his or her discretion to permit, or deny, the introduction of new evidence – evidence not in the record created by the Department – in support of an appeal. A balance between formality and flexibility is the goal. Also important is the Chairman's discretion to dismiss unripe or premature appeals.

Fourth, a stay of all action on an application while an appeal is pending is standard throughout Title 21. Nothing new is proposed here. While appeals can cause great delays, this legislation intends to import efficiency and focus into the process, and to leave in the Board's hands the power to dismiss frivolous claims while at the same time to afford better attention to legitimate appeals by aggrieved applicants and citizens.

Fifth, this legislation codifies the practice of granting party status to the applicant if the appealing party is not the applicant.

Sixth, the legislation proposes directing appeals from municipal infraction citations served by the Director of Planning & Zoning away from the Board of Appeals. The appeal, then, is to the District Court. This change simply makes the infraction appeal process in Title 21 consistent with the infraction appeal processes elsewhere in the Code.

PROPOSED AMENDMENTS

The Commission recommends the following specific changes to the proposed ordinance:

1. On p. 2, line 1. 21.030.010.B, *Purpose and Authority*: Change to "A PERSON WHO IS SERVED A MUNICIPAL INFRACTION CITATION BY THE DIRECTOR OF PLANNING AND ZONING OR A MISDEMEANOR CITATION INITITATED BY THE DIRECTOR MAY NOT APPEALED TO THE BOARD OF APPEALS.
2. On p. 2, line 10. 21.030.020.A, *Appeal Procedures:* Change to "AN APPEAL MAY BE TAKEN WITHIN THIRTY DAYS AFTER THE DECISION COMPLAINED OF BY FILING WITH THE PLANNING AND ZONING DIRECTOR A NOTICE OF APPEAL SPECIFYING THE GROUNDS OF THE APPEAL, SAID GROUNDS ARE, INCLUDING BUT NOT LIMITED TO, AN ARBITRARY AND CAPRICIOUS ACT BY THE DIRECTOR, AN ABUSE OF DISCRETION BY THE DIRECTOR, AN ERRONEOUS FINDING OF FACT BY THE DIRECTOR, OR AN ERROR OF LAW BY THE DIRECTOR. THE DIRECTOR SHALL, AT THE SOLE EXPENSE OF THE APPELLANT,

FORTHWITH TRANSMIT TO THE BOARD OF APPEALS ALL OF THE PAPERS CONSTITUTING THE RECORD UPON WHICH THE ACTION APPEALED FROM WAS TAKEN.

3. On p. 2, line 24. 21.030.020.B.3, *Review Procedures:* Change "DE NOVO" to "ON THE RECORD."
4. On p. 2, line 26-29. 21.020.030.B.4, *Procedure:* Delete the entire subsection.

Finally, the Commission recommends that the City Council suggest to the Board of Appeals that it revise the Board rules, specifically Article 8.a, to reflect the change from de novo to on the record procedure.

RECOMMENDATIONS

On November 7, 2019, the Planning Commission held a public hearing on O-34-19 and subsequently moved to recommend that the City Council adopt the ordinance with proposed amendments. The recommendation was approved with a vote of 7 to 0.

Adopted this 14th day of November, 2019

Robert Waldman, Chair