



City of Annapolis
Planning Commission
Department of Planning & Zoning
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September 16, 2021

To: Annapolis City Council
From: Planning Commission
Re: Findings for Ordinance O-22-21 (ZTA2021-010). Administrative Hearing Officer By Contract Established - For the purpose of establishing the position of Administrative Hearing Officer by Contract; providing for certain Contractual terms of service and line of authority; providing for certain powers and duties; revising the powers and duties of the Planning Commission; revising the powers and duties of the Board of Appeals; revising procedures for major site design plan applications, planned developments, special exceptions, variances, and nonconforming uses and structures; providing for appeals; providing that certain catchlines are not law and may not be considered to have been enacted as part of this ordinance; and matters generally relating to the Administrative Hearing Officer By Contract.

PURPOSE

The purpose of this ordinance is to establish the position of Administrative Hearing Officer (AHO). The City Council would delegate approval authority for major projects in the Department of Planning and Zoning to this part-time contractual position. This would include such projects as variances, special exceptions, planned developments, and major site design plan review. Currently, this approval authority is designated to either the Planning Commission or the Board of Appeals.

The ordinance describes the new position and the required qualifications such as good standing with the Maryland Bar Association. The table below shows how approval authority would shift under this legislation.

<u>Project Type</u>	<u>Current Approval Authority</u>	<u>Proposed Approval Authority</u>
Variances	Board of Appeals	Administrative Hearing Officer
Special Exceptions	Board of Appeals	Administrative Hearing Officer
Changes to a Nonconforming Use	Board of Appeals	Administrative Hearing Officer
Zoning District Boundary Adjustments	Board of Appeals	Administrative Hearing Officer
Planned Developments	Planning Commission	Administrative Hearing Officer
Major Site Design Plan Review	Planning Commission	Administrative Hearing Officer

RECOMMENDATIONS

The Planning Commission held a public hearing on this item on July 1, 2021 and September 2, 2021. There were no public comments on the legislation, although Alderman Arnett did speak to the intention of the ordinance.

The Commission did not support the legislation with a vote of 4 to 0.

This legislation is very broad and sweeping, and will fundamentally change the process for development application review and approval. It essentially removes the quasi-judicial standing of the Board of Appeals and the Planning Commission and concentrates the decision making process in the hands of a single individual. As a result, we have a number of critical concerns with this legislation.

1. With an Administrative Hearing Officer, major developments will be approved by a single individual. While the Planning Commission may hold hearing and provide input, there will be much less impetus for public comment and thus the benefits of better design, community-building focus, and environmental protections that the Planning Commission brings to major applications will be lost.
2. As the Administrative Hearing Officer serves at the pleasure of the City Manager there is no guarantee of independence from the City staff or other political influence. This has a potential to greatly influence the outcome of contentious applications.
3. The process for how that individual would evaluate applications is a major unknown. For example, simply determining if they do or do not satisfy code requirements is problematic because of ambiguities in our building and zoning codes and newer concepts under study such as form-based codes which are very prescriptive have not yet been installed where major developments are likely to occur. There are many facets to evaluation of larger developments that go beyond the nuts and bolts requirements of the code and the Planning Commission has the ability to bring subtle aspects of planning and design to the decision making process.
4. The addition of an Administrative Hearing Office essentially adds yet another non-binding layer that may increase the time for a decision on an application. In the past, the Planning Commission has not been an impediment to application timelines. While this may appear to streamline the development timeframe, paradoxically it will likely increase the application timeline if the non-binding review by the Planning Commission is considered.
5. In many jurisdictions, administrative hearings are conducted during the day which do not facilitate significant public input. This would be a loss of a critical part of any non-administrative planning process such as minor and major site design and planned unit developments.

For issues that are truly administrative in nature to which there are few issues or public objections they might be more expediently decided initially by an Administrative Hearing Officer. For the Planning Commission based on recent experience, these may include zoning boundary adjustments, residential conservation district requirements and minor inconsistency corrections to text in the code. However, in balance we do not see this as sufficient justification for an Administrative Hearing Officer. Furthermore, A contract employee with proper credentials in land use law and broad planning experience in other relevant jurisdictions - a must when concentrating such decision making process in a single person - will likely be a significant additional expense to the city, especially at a time when the budget and staffing is already under stress from the COVID-19 pandemic.

Adopted this 16th day of September, 2021


Ben Sale, Chair