

CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG, Mayor



BOARD OF MUNICIPAL AND
ZONING APPEALS

DEREK J. BAUMGARDNER, Executive Director
417 E. Fayette Street, Suite 922
Baltimore, Maryland 21202

May 12, 2020

The Honorable President and
Members of the City Council
City Hall
100 N. Holliday Street
Baltimore, MD 21202

**Re: CC Bill #20-522 – Board of Municipal & Zoning Appeals - Repeal of
Physically Present Requirements**

Ladies and Gentlemen:

City Council Bill No. 2020-522 has been referred by your Honorable Body to the Board of Municipal and Zoning Appeals for study and report.

The purpose of CCB2020-522 is to repeal certain provisions of the Zoning Code regarding the Board of Municipal and Zoning Appeals that require members of the Board to be “physically present” during a hearing and for voting; and providing for a special effective date.

BMZA supports this bill as amended to redact Section 3, which provides a sunset on its effect.

What This Bill Does

CCB2020-522 clarifies that Article 32 (Zoning Code of Baltimore City) does not expressly prohibit virtual hearings of the Board.

Prior to the current state of emergency, BMZA would conduct its public hearings in City Hall, Room 215 (Board of Estimates). These hearings are normally attended by anywhere from 50-100 people sitting in close proximity to one another, as well as board members and staff. Due to the current COVID-19 state of emergency, gatherings of that size and proximity are unlawful and unsafe.

After consultation with the Law Department, BMZA has commenced virtual hearings that meet all requirements of state and local laws. This bill merely *reinforces* the Board’s legal authority to hold virtual hearings, it does not grant any new ability to do so. It is for this reason that BMZA may hold virtual hearings prior the enactment of any ordinance effecting same. BMZA requests adoption of this bill with the amendment recommended by the Planning Commission which redacts Section 3, a sunset clause placed on the bill’s enactment.

What This Bill Does Not Do

CCB2020-522 does not alter, attempt to alter, or violate any state law. This bill does not violate or attempt to violate the due process rights of applicants or community members, nor does it restrict access to a public forum. Quite the contrary, it reinforces the ability of BMZA to utilize a virtual hearing platform and supports BMZA's current practice of providing a range of methods in which all interested parties may fully participate in virtual hearings of the Board (call-in, web platform, written testimony, post hearing rights, etc.). For example, the Baltimore City Planning Commission are currently conducting virtual hearings and have seen an *increase* in public participation.

Why This Bill Is Important

This bill is to support continuity of government operations. As a public forum and deliberative body, BMZA needs to ensure we are able to perform our professional duties as outlined in the Baltimore City Charter and State Land Use Article. This bill reinforces our ability to have public hearings, and will provide flexibility in administering those hearings during the COVID-19 international pandemic in this current state of emergency and will remove a potential obstacle to operations in the future. BMZA has no intent to continue virtual hearings indefinitely, and will resume regular operations as soon as the state of emergency is lifted and it is deemed safe to resume public hearings.

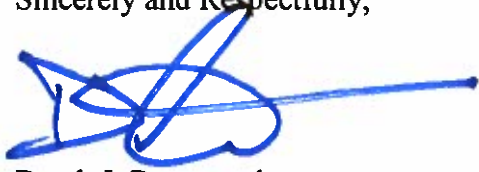
Many neighboring jurisdictions are conducting public land use hearings using virtual platforms or are in the planning stages to conduct virtual public hearings in the next 30 days including: Montgomery County, Howard County, Baltimore County, and Prince George's County, City of Gaithersburg, and others.

Why Section 3 Should be Redacted from this Bill

As stated above, this bill does not provide any new ability to hold virtual hearings of the BMZA. It provides needed flexibility in scheduling BMZA appeals and the platform BMZA can utilize in effectuating same by reinforcing current operations. Placing time restrictions on this flexibility has no purpose. Moreover, there are ancillary benefits for agency operations not related to the COVID-19 state of emergency including the ability to efficiently manage appeals remanded back to BMZA from the courts (sometimes years after the case was originally heard). Ordinance 11-574, which added the "physically present" language in 2011, places unclear and ambiguous limitations to BMZA operations but impacts no other city agency: this limitation was not imposed upon the Planning Commission, CHAP, City Council, the Ethics Boards, the Liquor Board, or any other public body. The current COVID-19 state of emergency amplifies the need to remove this limitation.

It is for these reasons that we respectfully request the City Council pass this bill with the amendment to redact Section 3, and that the Mayor sign it into law.

Sincerely and Respectfully,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Derek J. Baumgardner
Executive Director

