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Inspector General

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December 6, 2024

D'Andrea L. Walker
County Administrative Officer
400 Washington Avenue
Towson, Maryland 21204

Israel Patoka
Chair, Baltimore County Council
400 Washington Avenue
Towson, Maryland 21204

Re: OIG Investigative Report - Case No. 24-007

The mission of the Office of the Inspector General (“the Office”) is to provide increased accountability and oversight in the operations of the Baltimore County Government (“the County”) by identifying fraud, waste, and abuse, while also striving to find ways to promote efficiency, accountability, and integrity.

In fall 2023, the Office received complaints about a member of the Planning Board (“the Member”) who filed applications during the 2024 Comprehensive Zoning Map Process (CZMP) to rezone properties that were located outside of the Member’s assigned district. The complaints alleged the Member’s activities constituted misconduct in that they were self-serving. Accordingly, the Office initiated an investigation. The investigation consisted of interviews and a review of various records. Among the records examined were applications and related paperwork filed during the 2016, 2020, and 2024 CZMP cycles, email communications, open-source records, and the Baltimore County Code.

Based on the evidence collected, the Office was able to substantiate that the Member had submitted four (4) rezoning applications during the 2024 CZMP for properties that were located outside of the Member’s district. While historically it has been rare for a member of the Planning Board, who is assigned to a particular district, to file an application to rezone a property that is outside of their district, the Office was not able to find any language in the Baltimore County Code, in any historical training, or other document that prohibits such conduct. Thus, the Office was not able to substantiate that the Member’s actions were improper, nor was any evidence uncovered that suggested the four (4) rezoning applications were made by the Member in an attempt to financially profit from them. With that said, the Office believes that changes could be implemented regarding the Planning Board and the CZMP that could prevent similar complaints

from arising in the future.

I. Applicable Sections of the Baltimore County Code

Article 32 (Planning, Zoning, and Subdivision Control) Title 3 (Zoning) Subtitle 2 (Zoning Process) Part II (CZMP)

Section 32-3-211 - "Issue" Defined.

In this Part II, "issue" means a tract or parcel of land proposed for a change in zone or district classification.

Section 32-3-212 - Changes in Zoning

- (a) Duty of Planning Board to recommend revised map. Within the one-year period immediately preceding May 31, 2004, and within each one-year period immediately preceding May 31st of every fourth year thereafter, the Planning Board, after completely reviewing the zoning map then in effect, shall recommend to the County Council a new or comprehensively revised version of the map in accordance with this subtitle.
- (b) Zoning maps sent to County Council; identify changes. (1) The Director of Planning shall transmit the recommended zoning map to the County Council within 20 days after the Planning Board's vote on the recommended map. (2) The map shall identify as a separate issue each area or parcel of land recommended or considered by the Planning Board for a change in zoning.
- (c) Applicability. The provisions of this section are mandatory and shall apply regardless of any optional actions taken under sections 32-3-202 and 32-3-203 of this subtitle.

Section 32-3-213 - Hearing Required

- (a) In general. Each time the County Council receives a recommended zoning map from the Director of Planning under the procedure set forth in section 32-3-212 of this subtitle, the County Council shall schedule a hearing on the zoning map, in accordance with the procedures set forth in section 32-3-221 of this subtitle.
- (b) Adoption of map. The County Council shall adopt a new zoning map before September 16, 2004 and before every September 16 every fourth year thereafter.

Section 32-3-214 - Authority to Raise Issues; Schedules and Fees

- (a) Schedule. (1) The time period for filing issues during the comprehensive zoning map process: (i) Begins on September 1 every fourth year starting in 2003; and (ii) Ends on November 30 of the same year. (2) During the time period established under paragraph (1) of this subsection, issues may be filed as follows:

	Beginning	Ending
Period 1. Public and Planning Director	September 1	October 15
Period 2. Planning Board and Planning Director	October 1	October 31
Period 3. County Council	November 1	November 30

(3) A person may not file a new issue after November 30. (4) An issue may not be withdrawn or modified after it is accepted for filing.

(b) Fees. The County Administrative Officer shall establish the fees for filing an issue under this section: (1) On the recommendation of the Director of Planning; and (2) In accordance with section 3-1-202 of the Code.

Section 32-3-215 - Notice to Owner

(a) Posting. A property being considered for a possible change of zoning classification shall be posted at least 15 days before the Planning Board hearing on the issue to which the identified property relates.

(b) Cost. If a request for change in zoning has been filed by an applicant other than the county, the applicant shall be responsible for the cost of posting by payment of a posting fee to the county.

(c) Notice. (1) Within 15 days after a request for a change in zoning classification is filed, the Department of Planning shall send notice, by regular mail, to the property owner and to the adjacent property owners. (2) The applicant shall provide the Department of Planning with a list, under affirmation, of the names and addresses of the adjacent property owners.

(d) Manner and content of posting and notice. (1) Subject to paragraph (2) of this subsection, the Department of Planning shall determine the manner of posting and the content of the notice. (2) The notice to the property owner shall be in the form of a letter that explains the request for change in zoning.

(e) Multiple properties. If a zoning issue contains more than one property, the Department of Planning may post one or more notices for all properties included in the issue.

(f) Failure to post or mail. Failure to post a property or mail notice does not invalidate or affect any subsequent change in the zoning of the subject property.

II. Background on CZMP

The CZMP is a county-wide zoning application process that occurs every four years in Baltimore County.¹ The 2024 CZMP began on September 1, 2023 and concluded in September 2024. During the CZMP, anyone may file an application for a zoning change to any property in Baltimore County. Below are a few noteworthy items regarding the CZMP:

- Any piece of property, real or commercial, can be the subject of an application.
- No requirement that the applicant own or have an interest in the subject property.
- No requirement that the applicant reside in the Council district where the subject property is located or in Baltimore County.
- No requirement that a property owner be provided notice before an application is filed.
- Once an application has been submitted and the proposed zoning is mapped, it cannot be withdrawn or changed.

Applications for the 2024 CZMP were filed according to the schedule below:

- Between August 14, 2023 and August 31, 2023, the public could begin submitting applications online.
- Between September 1, 2023 and October 15, 2023, applications could be submitted by the public along with a fee. The fee charged to the general public between September 1 and September 30 is \$1,000. The fee is increased to \$1,600 if the filing occurs between October 1 and October 15. The public is not allowed to file an application after October 15, 2023.
- Between October 1, 2023 and October 31, 2023, applications could be submitted by Planning Board members. No fee is assessed for these submissions. Planning Board members could not file an application after October 31, 2023.
- Between November 1, 2023 and November 30, 2023, applications could be submitted by County Council. Similar to the Planning Board, no fee was required for these submissions.

Once an application is submitted, staff from the Department of Planning are assigned to log the application as well as to research and map the requested zoning change. Each application is assigned a unique number based on which of the County's seven Council districts the application is filed in. For example, the fifth application filed in Council district 1 would be assigned 1-005 and the third application filed in Council district 2 would be assigned 2-003. Once an issue is mapped by the Department of Planning, the issue is considered "filed" and cannot be withdrawn. Once all applications have been received by November 30, 2023, the applications are compiled into a log that is then published under the title Log of Issues on the County's website.

The next step in the process is for the Department of Planning to provide notice to any "affected" property owner regarding the application for rezoning. This consists of signs being

¹ For more information regarding the CZMP process, visit <https://www.baltimorecountymd.gov/departments/planning/comprehensive-rezoning>

displayed on the subject property and letters being sent to the property owner and other nearby properties. This could be the first time a property owner learns that their property has been the subject of a CZMP application for rezoning. For any application filed by the Planning Board or County Council, the sign is prepared by the Department of Planning and posted by Code Enforcement.

After notice has been provided, public hearings are held in the seven Council districts for the submitted applications. For the 2024 CZMP, these hearings took place in early 2024 over a series of months. The result of these hearings is that the Department of Planning makes recommendations regarding the rezoning applications. For each issue, the Department of Planning can either support the requested zoning change, support the existing zoning, or propose altogether different zoning for the property. The Department of Planning's recommendations are then incorporated into the Log of Issues.

The next step in the process is for the Planning Board to conduct a series of public hearings on the Log of Issues. For each rezoning request, the Planning Board members vote in favor of the change or against it. Members also have an opportunity to isolate an application for further study by the Department of Planning. At the conclusion of these hearings, the Log of Issues is updated to reflect the positions of the Planning Board.

The ultimate decision for rezoning is made by the County Council. Like the Planning Board, the County Council holds public hearings on the various rezoning applications. By the time of those hearings, the Council has been made aware of the Department of Planning and the Planning Board's positions as to each application. However, the Council is not required to adopt those positions. For example, Council may support an applicant's request to rezone a property even though the Department of Planning and the Planning Board oppose such a rezoning. Typically, councilmanic courtesy is employed during the CZMP, which typically results in a councilmember supporting the choices of their colleagues with the understanding that those colleagues will show the councilmember the same courtesy. Ultimately, any changes as a result of the CZMP must be codified in legislation approved by the County Council. It is noteworthy that there is no requirement that the Council's decision regarding the rezoning of a property conform to pre-existing zoning laws or decisions.

III. Composition and Role of the Planning Board

The Planning Board consists of 15 citizens who are appointed by either the County Executive or a councilmember. The County Executive has eight at-large appointments. The remaining seven appointments are made by the Council, with each councilmember getting one appointment for their respective district.

Historically, there were no term limits for Planning Board members. However, in the November 2024 election, the citizens of Baltimore County approved Question C on the Baltimore County ballot. As a result, effective January 2025, members of the Planning Board can only serve three consecutive terms and County Council must now confirm all appointments to the Planning Board.

Planning Board members have a variety of responsibilities aside from the CZMP. They play a role in the County’s budget process, Master Plan, Master Water and Sewerage Plan, Basic Services Map, and the Capital Improvement Program. They also review the Annual Development Impact Fee Reports. Planning Board members receive a yearly stipend for their work.

During the CZMP cycle, the Planning Board plays an important role. As noted earlier in the report, they review and consider all of the rezoning applications, hold public hearings on each application, and ultimately, vote on the proposed zoning changes. As members, they can also file applications during CZMP without paying the required fee. There is no requirement that applications filed by a Planning Board member be consistent with the Master Plan or reflect the sentiment of the rest of the Planning Board. There is also no rule that states a district-appointed member of the Planning Board can only file an issue in their own district.

IV. Relevant Data

As part of the investigation, the Office examined the applications filed by the Member during the 2024 CZMP cycle as well as their applications in past CZMP cycles. The Office also examined all applications filed by Planning Board members during the 2016, 2020, and 2024 CZMP cycles. Below is some of the data compiled by the Office during this review.

Table 1		
CZMP Cycle	Total No. of Applications Filed	Total No. of Applications Filed by Planning Board Members
2016	516	9
2020	308	14
2024	389	15
Totals	1,213	38

As can be seen in Table 1, of the 1,213 applications filed during the past three CZMP cycles, only 38 of those, or approximately 3%, were filed by members of the Planning Board. The table below (Table 2), shows the breakdown of the types of Planning Board members who submitted those 38 applications.

Table 2				
CZMP Cycle	Total No. of Applications Filed by Planning Board Members	Total No. of Applications Filed by At-Large Members	Total No. of Applications Filed by District-Appointed Members	Total No. of Applications Filed by District-Appointed Members Outside of their Respective District
2016	9	0	9	1 (by the Member)
2020	14	4	10	1 (by the Member)
2024	15	0	15	4 (by the Member)
Totals	38	4	34	6 (all by the Member)

As seen in the last column of Table 2, there have been a total of six applications filed over the last three CZMP cycles by district-appointed Planning Board members to rezone properties in a district

that is not the Planning Board member's district. In all six cases, the applications were filed by the Member. The four applications filed by the Member during the 2024 CZMP cycle ("the Subject Applications"), which are bolded in Table 2, are the focus of this report.

V. Interview of the Member

The Office interviewed the Member about the Subject Applications. The Member explained that in each case, they had been contacted by an attorney who had missed the CZMP public filing deadline (October 15, 2023) and asked if the Member would file the application on their behalf. The Member clarified that they would not have filed any of the Subject Applications if they did not support the underlying zoning request. When pressed on this, the Member walked investigators through each of the Subject Applications and explained why they supported the requested zoning change. When asked why they did not contact the Planning Board members who were assigned to those specific districts as a courtesy, the Member explained they were not required to make such a notification. Simply put, as a Planning Board member, they were free to file an application to rezone any property in Baltimore County during the time period set aside for the Planning Board, which was October 1, 2023 through October 31, 2023. As for the Subject Applications, the Member submitted all of them on October 27, 2023, which was after the public filing deadline and within the time period allotted for members of the Planning Board.

The Member did not believe it was of any significance that the Subject Applications concerned properties that were located outside of the Member's assigned district as the submissions were only the first step in the process. In other words, the Subject Applications still needed to be: reviewed by the Department of Planning personnel; scrutinized by the public during public hearings; discussed by the Planning Board as a whole; and ultimately, approved by the County Council. When asked why in the past three CZMP cycles they had been the only district-assigned Planning Board member to submit a property for rezoning that was outside of their district, the Member stated it could be because they were more actively engaged in the work of the Planning Board as compared to some of their counterparts. As for the Subject Applications, the Member surmised they, as opposed to other members of the Planning board, were approached by the attorneys because they have a reputation for being pro-development; and thus, would be more likely to support the attorneys' rezoning requests.

The Office told the Member that of the Subject Applications, three of the property owners were unaware that an application had been filed for their property. This was news to the Member and they simply stated that it was an issue for the attorney and not the Member. The Member was asked about the filing fee, which had been waived because the Member, as part of the Planning Board, was not required to pay the fee pursuant to the CZMP requirements. Specifically, the Member was asked if it was fair that the attorneys and their clients, by utilizing the Member to facilitate the filings, were not subject to the filing fee for the Subject Applications. In response, the Member stated the fee was not the issue and the attorneys would have gladly paid a late filing fee if that had been an option. The Member opined that the addition of a late filing fee would have prevented these complaints against the Member as the attorneys could have simply filed the Subject Applications themselves in late October 2023.

The Member was adamant that they did not ask for anything in exchange for submitting the Subject Applications on behalf of the attorneys nor was anything offered to the Member. The Member also did not expect to receive any type of benefit going forward from any of the attorneys for having submitted any of the Subject Applications.

VI. Other Relevant Interviews

In addition to the Member, the Office interviewed Department of Planning personnel, current members of the Planning Board, members of County Council, and some of the owners associated with the Subject Applications. During the interviews, the Office learned that there are currently no policies and procedures governing the Planning Board and there is very informal training provided to the Planning Board's members. Any training that is provided is conducted upon a member's initial appointment to the Planning Board.

The Office learned it is typical for Planning Board members to file CZMP applications within their districts, and it was considered unusual for a member to file an application outside of their district. The majority of Planning Board members interviewed by the Office believe if a Planning Board member is to file an application for a zoning change within a certain district, it should be filed by the member assigned to that district. One member of the Planning Board stated that applying "for a zoning change in an area that you do not live in without calling or talking to the person who represents that area is inappropriate." Another member opined that while there is very little guidance on this issue, at a minimum, the Planning Board member assigned to the affected district should have been contacted before the application was filed. Multiple members interviewed by the Office noted that if they had been approached about filing an application outside of their district, they would have directed the person to file the application through their own district representative on the Planning Board. One of the Planning Board members told the Office that in the past, they had submitted an application on behalf of another at-large member and had notified the local councilmember of the filing. They also noted that while not a requirement, they chose to make the notification so the councilmember would not have been blindsided by the filing.

The Office spoke with a councilmember whose district included one of the Subject Applications. The councilmember was upset by the filing as it undermined the concept of district courtesy. Additionally, the councilmember believed they should have been contacted by the Member in advance of the filing as a courtesy as the Member's action disrupted the councilmember's pre-existing business process for CZMP applications.

Three property owners, whose properties would have been directly affected by the Subject Applications, had not been made aware of the rezoning requests until after the Subject Applications had been filed. Two of the property owners contacted their councilmember about this occurrence.

No information was learned during any of the interviews that suggested the Member filed the Subject Applications in exchange for a financial benefit from the attorneys or their clients. Further, no evidence was uncovered that suggested the Member or their employer had a financial interest in any of the properties associated with the Subject Applications. One of the Planning Board members told the Office during an interview that the Member had been transparent with the Planning Board about the Subject Applications.

VII. Conclusion

The Office was able to substantiate that the Member, who is a district-appointed member of the Planning Board, had filed four applications during the 2024 CZMP for properties that were located outside of the Member's assigned district. Further, the Office learned that such filings were unusual in that since the 2016 CZMP, only six applications have been filed by district-appointed members of the Planning Board for properties that were outside of the members assigned districts; and in each of the six cases, the Member was the applicant (see Table 2). With that said, the Office could find no rule, policy, or formal documentation that forbid a district-appointed Planning Board member from making such a filing. In addition, the Office was told during several interviews that no such rule, policy, or documentation exists. While some of the interviewees were bothered by the Member's conduct, nobody could point to specific documented language that prohibited the Member from filing the Subject Applications.

Considering the information in the preceding paragraph and various statements made by interviewees, the Office has the following recommendations:

- There should be formal policies and procedures for the Planning Board that at a minimum, set forth the Board's purpose, its operating procedures, the duties and responsibilities of its members, and any ethical considerations that should govern the members as they carry out their duties and responsibilities.
- There should be formalized trainings given to new members of the Planning Board that highlight the salient points contained in the policies and procedures as well as other areas of significance that may arise during their tenure.
- When a Planning Board member intends to submit a rezoning application that affects a property or properties in a district other than their own, there should be a requirement that the Planning Board member assigned to the affected district be notified before the matter is filed.
- The Log of Issues should reflect the names of the Planning Board members who file issues as opposed to simply reflecting "Planning Board" as the filing party.
- A fee should be assessed if an individual/entity has a Planning Board member or councilmember file a matter on their behalf. As an alternative, a late fee could be instituted that permits a member of the public to file an issue past the public filing deadline date.
- An applicant should have the ability to withdraw a rezoning application even after it has been mapped by the Department of Planning.
- There should be some requirement that a property owner, whose property has been put in for rezoning by a third party, be notified directly of the proposed rezoning in a timely manner and afforded all relevant information as to the rezoning request such that the property owner has ample time to support or oppose the rezoning.

This matter is being referred to you for an official response. Please respond in writing by January 10, 2025. In the response, please indicate what actions have been taken or what actions you intend to take regarding this matter. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Kelly Madigan".

Kelly Madigan
Inspector General
Office of the Inspector General

cc: John A. Olszewski, Jr., County Executive
Sean Naron, Chief of Staff
James R. Benjamin, Jr., County Attorney
Thomas Bostwick, Secretary, County Council



KATHERINE A. KLAUSMEIER
County Executive

D'ANDREA L. WALKER
County Administrative Officer

January 10, 2025

Ms. Kelly Madigan
Inspector General
Office of the Inspector General
Baltimore County Government
400 Washington Avenue
Towson, Maryland 21204

RE: IG Investigative Report 24-007

Dear Ms. Madigan:

Thank you for submitting OIG Investigative Report-Case No. 24-007 regarding complaints about a member of the Baltimore County Planning Board who filed applications during the 2024 Comprehensive Zoning Map process to rezone properties that are not in the Council district that he represents.

You have determined that there was no wrong-doing, concluding that “the Office was not able to substantiate that the Member’s actions were improper, nor was any evidence uncovered that the suggested that the four (4) rezoning applications were made by the Member in an attempt to financially profit from them”.

The Administration and its Department of Planning have reviewed your report, and will work with the Planning Board and its Chair to study the feasibility and benefit of implementing the recommended actions within the report.

Thank you for reaching out regarding this matter. If you have any further questions or need any further clarification on this subject, please feel free to contact me or Director of Planning, Stephen Lafferty.

Sincerely,

A handwritten signature in blue ink, appearing to read "D'Andrea L. Walker".

D'Andrea L. Walker
County Administrative Officer

cc: Katherine A. Klausmeier, County Executive
James Benjamin, County Attorney
Sameer Sidh, Deputy County Administrative Officer
Stephen Lafferty, Director, Department of Planning