

# A Growing Resource: People's Counsel

A private school located in a residential zoning district proposes to expand the floor area of the school building by a third in order to accommodate its growing student population. The owners of an office building located on a heavily traveled avenue in town seek a rezoning of its property so that they may attract a carry-out restaurant on the ground floor of the building. A wireless telephone company intends to construct a cellular tower disguised as a pine tree located next to the local fire department. Your neighbor plans to build a deck in his backyard that abuts your own backyard and potentially obstruct your current view.

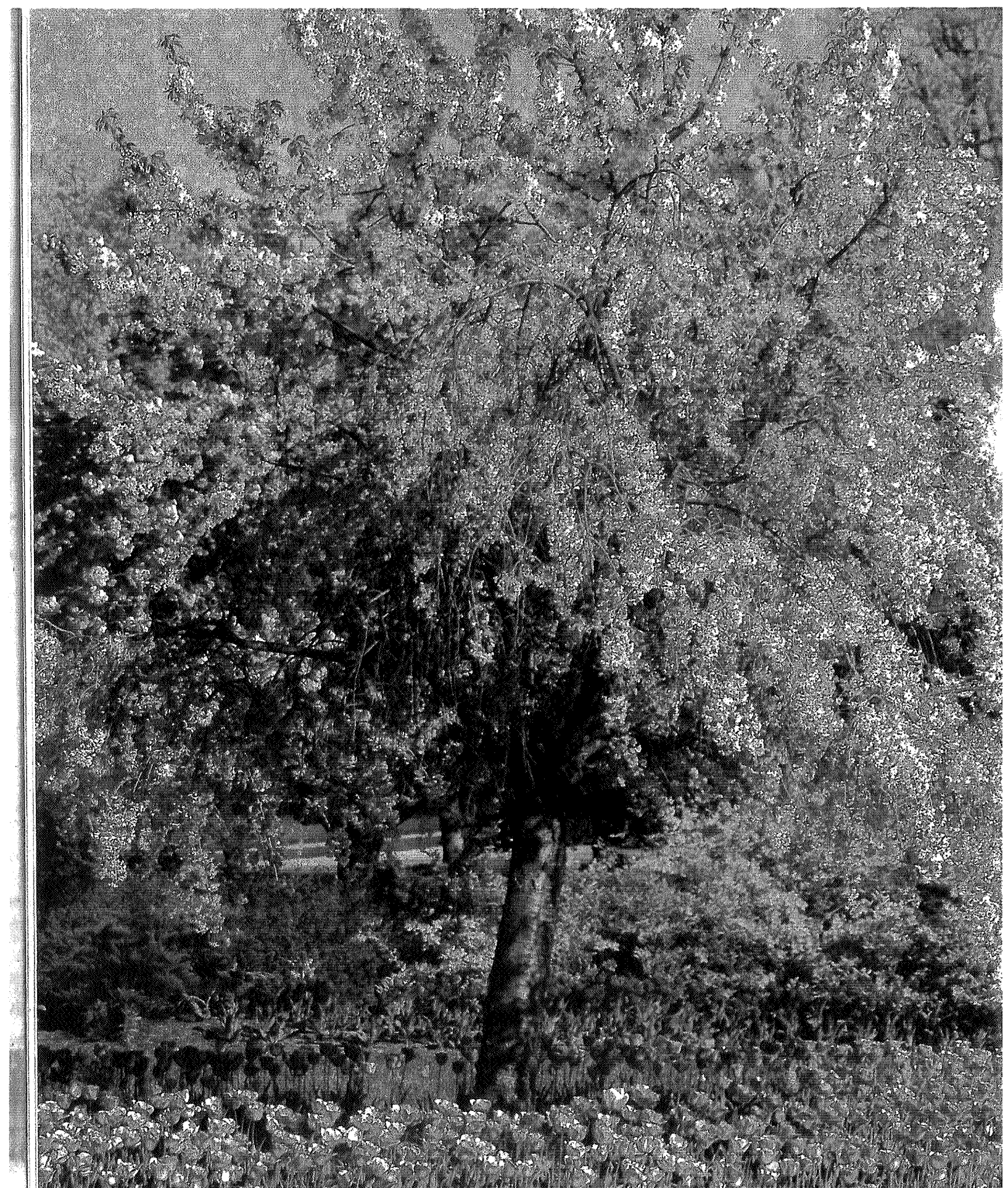
These are just a sampling of countless examples of zoning applications submitted to local jurisdictions throughout Maryland, mainly to county governments, on a daily basis as development continues and property owners seek to maximize the potential economic value of real property. These

types of issues can impact any of us and may generate questions by impacted business and community members.

If these types of issues arise in Baltimore County, Harford County, Howard County, Montgomery County, or Prince George's County, the public may benefit from services offered by the respective Office of "People's Counsel" in these five counties. Each county uses its unique name for the position in each respective county, such as Zoning Counsel or People's Zoning Counsel. For the purpose of clarity, the term "People's Counsel" is used throughout this article when generally referring to the position. A county People's Counsel is typically a Maryland attorney with considerable knowledge and experience in the areas of local zoning, subdivision, and environmental laws tasked with promoting and protecting the public's interests. Roles and responsibilities vary by County.

In most cases, a People's Counsel may enter his appearance in a local municipal hearing, ideally free from political influence, to advocate issues of concern to private citizens. However, a People's Counsel may not represent any private party in any proceeding. The public interest guides the actions of a People's Counsel rather than the individual needs of a private citizen.

A People's Counsel is not a pro bono attorney available to represent a private party in an administrative appeal. Mr. Stan Brown, current People's Zoning Counsel for Prince George's County, commented that "the title is a misnomer because I do not represent a client during the zoning process, but I promote the integrity of the zoning process." Mr. Martin Klauber, current People's Counsel for Montgomery County, explained that he does not represent citizens or community groups. He represents the "public interest."



By Nicole M. Lacoste

To the extent that the public interest can be considered a "client," a People's Counsel is tasked with protecting the interests of that often times ambiguous and potentially conflicting "client." Some of the People's Counsel positions are part-time positions in the respective county with private practices maintained concurrently. Other People's Counsel positions are full-time with active, personal involvement within the communities.

It is important to note that the People's Counsel position discussed here is not to be confused with the Maryland-State People's Counsel for Insurance. The State Office of People's Counsel was established over 80 years ago pursuant to Chapter 534, Acts of 1924. The State created this position so as to provide service and advocacy in support of the public interest in utilities, such as the consumption of gas, electric, telephone, and sewer and water services, by residential consumers.

### **Proposed Legislation for a People's Counsel in Baltimore City**

The benefits of a People's Counsel, as demonstrated in the five existing offices, has caught the attention of the Mayor and City Council of Baltimore. The City Council is considering the creation of a People's Counsel position for the benefit of its citizens, similar to the other existing models in Maryland.

City Councilman James Kraft introduced legislation on November 21, 2005 (Legislative File ID 05-0289) to establish an Office of People's Counsel through which a People's Counsel representing the public interest of Baltimore City could "participate as a party in certain land-use proceedings" including, but not limited to, any legislative or administrative proceeding for the adoption, approval, amendment, or enforcement of conditional uses, variances, the Master Plan for

Baltimore City, Urban Renewal Plans, and the subdivision or rezoning of land. (§ 4-1(c).

This proposed legislation provides authority to the People's Counsel to participate as a party in any land use proceeding before the Planning Commission, the Board of Municipal and Zoning Appeals, the Zoning Administrator, the Commission for Historical and Architectural Preservation, and the Department of Housing and Community Development. (§ 4-10 of Legislative File ID 05-0289.)

Billy Hwang, legislative aide to Councilman Kraft, said that the original idea for this legislation was in response to countless inquiries received by the staff of the Councilman's office from concerned community residents with legitimate questions about proposed development in their neighborhoods as well as general land use and zoning questions. Hwang explained that Councilman Kraft was aware of People's Counsel positions already operating and assisting citizens with zoning and land use issues in other jurisdictions and envisioned a similar resource for Baltimore City.

Prior to drafting the legislation, his office discussed the mission and logistics of operating an Office of People's Counsel with the People's Counsels for Baltimore and Montgomery Counties. Similarities are evident between the proposed legislation under consideration by the City Council and the existing structure of the People's Counsel positions in Baltimore and Montgomery Counties. The proposed legislation has not passed and remains in the Committee for Judiciary and Legislative Investigations. A complete version of the draft legislation is available at <http://legistar.baltimorecity-council.com/mattersearch/> or by contacting Councilman Kraft's office at 410.396.4821.

Each of the five existing People's

Counsel offices vary slightly, however, all are mandated to serve and protect the public interest. The following sections provide brief overviews of the individual County offices with specific contact information.

### **Baltimore County**

The role of the Baltimore County People's Counsel has evolved throughout the past three decades. At its inception, Baltimore County amended its County Charter in 1974 to create a People's Counsel position with the purpose of defending the County's comprehensive zoning maps. Four years later, the role of the People's Counsel expanded to also include the responsibilities of defending the County's master plan and natural resources.

The People's Counsel may appear as a party in administrative land use and environmental cases before the Baltimore County's Zoning Commissioner and the Board of Appeals on behalf of the "general public." The People's Counsel may also enter his appearance before local, state, and federal administrative agencies and courts. The position is tenured once the attorney is appointed.

The People's Counsel enters his appearance in all zoning reclassification, variances, and special exceptions cases, as well as any special hearings before the Zoning Commissioner. Mr. Peter Max Zimmerman, the current People's Counsel for Baltimore County, explains that he follows that process in order to determine if legal involvement is necessary in order to protect the public interest.

It is important to point out that the appellate courts have sustained or recognized the authority or standing of the People's Counsel for Baltimore County to participate in such cases. See *People's Counsel for Baltimore County v. Crown Development Corp.*, 328 Md. 303 (1992); *People's Counsel for Baltimore*

*County v. Maryland Marine Mfg. Co.*, 316 Md. 491 (1989); *Sycamore Realty Co. v. People's Counsel for Baltimore County* 344 Md. 57 (1996); and *People's Counsel for Baltimore County v. A.V. Williams*, 45 Md. App. 617 (1980). These cases are important not only for the People's Counsel for Baltimore County, but also to support the authority of other People's Counsel offices to appear in the courts, including any office established by Baltimore City.

The County's Charter also provides full access by the People's Counsel to all county agency records so that the People's Counsel may investigate any land use issue in the County that brings special attention to the People's Counsel.

The Baltimore County budget provides for the People's Counsel, a Deputy People's Counsel, and support staff as needed. In addition to Mr. Zimmerman serving as People's Counsel, Baltimore County also benefits from the service of a Deputy People's Counsel, Carole S. Demilio, Esquire. They both can be reached at 410.887.2188.

## Harford County

Harford County began to face a time of rapid new development beginning over three decades ago and realized that its citizens did not have the financial resources to play a meaningful role in the development process. The position of People's Counsel in Harford County was conceptualized and introduced as legislation in 1976, after an interesting political battle involving an override by the County Council of a County Executive veto, was created by a County Charter amendment later that same year. The bill creating the position of People's Counsel, Bill 76-103, describes the People's Counsel as an attorney representing "the interests of the public in all matters and proceedings preliminary to, arising out of, or affecting the zoning classification or reclassification of land in the county."

Bill 76-103 also grants the People's Counsel the authority to be "free to make an independent determination as to matters and proceedings which he shall participate and the conduct of the affairs of his position in performing his duties and functions."



In addition to a People's Counsel position, the Charter amendment also created a People's Counsel Citizens Advisory Board. One purpose of the People's Counsel Citizens Advisory Board is to consider in which specific cases and issues the People's Counsel shall enter her appearance so as to promote good development in the County. A private citizen from Harford County, the County Council, or the People's Counsel may approach the People's Counsel Citizens Advisory Board to request that a particular matter is considered by the People's Counsel Citizens Advisory Board.

The People's Counsel Citizens Advisory Board is comprised of a group of seven citizens appointed by the County Council who are as a group, "broadly representative of all segments of the County's population." The main purpose of the People's Counsel Citizens Advisory Board set forth in Bill 76-103 is to provide guidance and make recommendations to the People's Counsel regarding any matter referred to them. The People's Counsel Citizens Advisory Board facilitates meetings open to the public on the fourth Tuesday of each month.

During these monthly meetings, the People's Counsel Citizens Advisory Board reviews all zoning appeals and reclassification applications submitted to the County for review and consideration. Based on discussion at these meetings, the People's Counsel Citizens Advisory Board communicates its recommendations to the People's Counsel for further action.

The current People's Counsel for Harford County is Valerie H. Twanmoh, Esquire. She can be reached at 410.838.4500.

## Howard County

Howard County has taken a limited approach to the duties of its Zoning Counsel since the inception of the posi-

tion in 2000. The position is fairly new and created as a part-time, contractual position.

Two major responsibilities of the Zoning Counsel are: (1) provide information to any person or group of persons interested in any zoning matter or County procedure, and (2) by request of the County Council, appear at Zoning Board hearings for "piecemeal zoning map amendments for the purposes of producing evidence and testimony supporting comprehensive rezoning and facilitating the compilation of a complete record." Howard County Code, Subtitle 10, Section 16.1000. The Zoning Counsel may not provide legal advice or enter an appearance in administrative hearings. The role is limited to the two above-referenced tasks.

Communication with the Zoning Counsel is handled through the County Council Office at 410.313.2001. Eileen E. Powers, Esquire, is the current Zoning Counsel for Howard County.

## Montgomery County

Almost a decade passed between the time the County first began discussions about creating an Office of People's Counsel until the adoption of the position in 1999. Funding was authorized by the County Council in 2000 and the office was established shortly hereafter. The Montgomery County People's Counsel, Martin Klauber, Esquire, describes himself as an "evangelist" of sorts, because he expends great effort in "getting the word out that I am here for the public by any way possible."

Mr. Klauber summarizes the two primary objectives of his position as: (1) participate as a party of record in rezoning, special exception, variance, subdivisions, and site plan proceedings, and (2) ensure every resident of the County is able to participate effectively in the land use process.

The County Code provides that the People's Counsel has the duty to "pro-

tect the public interest" and is authorized to participate in proceedings before the Board of Appeals for matters involving variances or special exceptions. The People's Counsel may also appear before the County Council or Hearing Examiner, solely for oral argument, for matters involving a local map amendment or a development. The People's Counsel may also appear before the Planning Board if the proceeding involves an action on an "optional method of development," a subdivision plan, or a site plan. Montgomery County Code, Sec. 2-150(b).

Mr. Klauber attends community meetings and provides advice on how to present issues to the County boards and agencies. His enthusiasm for his job has led to the creation of two initiatives that stray outside the defined perimeters of the position. The first initiative is for the People's Counsel to provide mediation services in land use disputes.

The second initiative is the creation of "Community Liaison Councils." A Community Liaison Council is created for case specific land use matters to promote good communication between involved parties and avoid potential legal conflict. For example, Mr. Klauber has applied the Community Liaison Council option in matters involving a private school, a facility for homeless children, and a swimming club. These Councils are composed of the special exception holder and representatives from the community in which the special exception is located. They meet a certain number of times per year to discuss developments and any potential issues or concerns the affected communities may share. Mr. Klauber describes this initiative as a "flexible interpretation of the legislation" and a preventive tool for avoiding conflict between parties in Montgomery County.

The Office of the People's Counsel of

Montgomery County can be reached at 240.777.9700.

## Prince George's County

Prince George's County has experienced tremendous growth throughout the past four decades and, naturally, its People's Zoning Counsel is very busy. In Prince George's County, the position of People's Zoning Counsel is not a full-time position. Stan Brown, Esquire, the current People's Counsel for Prince George's County maintains his private practice of law while assisting community members throughout the County.

Section 712 of the County Charter authorizes the operation of its Office of People's Zoning Counsel. Compensation for this position is derived from the annual budget of County Council Prince George's County Code, Sec. 27-139. The People's Zoning Counsel is appointed by the County Council, pursuant to Section 322 of the County Charter, for a four year term. Despite the short tenure of this position, political whims are avoided by the safeguard of the required two-thirds vote of the members of the County Council to remove a standing People's Zoning Counsel, Prince George's County Code, Sec. 27-137.

Education of the public is an important responsibility of the People's Zoning Counsel, Prince George's County Code, Section 27-139.02. The County Council may request specific outreach service from the People's Zoning Counsel. For example, Mr. Brown said that he meets with homeowner associations periodically to explain the zoning process pursuant to a request from the County Council. In addition, without becoming a party to the proceeding at hand, the People's Zoning Counsel may provide technical assistance to any person about a Zoning Hearing Examiner, Planning Board or Board of Appeals proceeding.

Mr. Brown describes the balance that he must maintain while serving the public interest "as an objective lawyer." In order to maintain the objectivity, Mr. Brown does not represent any side in an administrative hearing. Protecting the evidentiary record is his primary goal. Sometimes Mr. Brown assists community groups and sometimes developers. Conversely, Mr. Brown may find himself on any given day opposing both the developer and community group.

Mr. Brown may be reached at 301.883.8888. He works from his private office but he also maintains an office in the County's municipal building in Upper Marlboro on alternate Mondays and every Wednesday.

## Conclusion

An effective Office of People's Counsel can reap valuable benefits for a municipality as demonstrated by the existing People's Counsel currently operating in the five Maryland counties discussed above. If Baltimore City creates its own Office of People's Counsel, it could provide a "protector," a "defender," and an "advocate" for the public interest concerning zoning matters. If the City Council and Mayor agree to create the position, all efforts should be made to prevent the People's Counsel from becoming overwhelmed with responding to questions from residents and businesses affected by zoning matters in the City.

The City should emphasize, if the bill is passed, that the City's Zoning Office and Department of Planning, as well as the Baltimore Development Corporation, will continue to serve as resources for the public. The existing five People's Counsels appear to have struck a manageable balance with handling their tasks at hand and can serve as appropriate role models for any Baltimore City People's Counsel to come.

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