



Agenda Date: July 2, 2009

Item No.:

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Carol Rubin, Associate General Counsel *CR*

FROM: Christina Sorrento, Associate General Counsel *CS*

DATE: June 19, 2009

RE: Legislative Package for Enforcement Program

INTRODUCTION

In an effort to advance the Commission's efforts and ability to enforce violations of its own previously approved actions, the Office of General Counsel has been working with staff on a comprehensive legislative package that includes revisions to the Forest Conservation Law, the Subdivision Regulations, and the Zoning Ordinance, as well as proposed Enforcement Rules for the Planning Board. This comprehensive Enforcement Package develops a clear process for enforcement hearings, assures due process to alleged violators, and ensures that the Planning Board has the necessary authority and appropriate means to enforce its own previously approved actions. Furthermore, the processes that will be codified in the law will be substantially similar to the processes under which the Board operates in the approval and defense of its initial actions.

This comprehensive Enforcement Package also addresses difficulties and conflicts in current law that has limited the effectiveness of the Planning Board's enforcement actions. County residents have expressed concerns with the enforcement process and want assurance that violations will be pursued and corrected. This Enforcement Package will provide the Planning Board with the proper tools to efficiently and effectively address violations. Comprehensive legislative changes are essential to ensure that approved plans that the Board granted with public participation and input are upheld.

Included in this package are proposed revisions to Chapters 50, the Subdivision Regulations (Attachment One), Chapter 59, the Zoning Ordinance (Attachment Two), and Chapter 22A, the Forest Conservation Law (Attachment Three) of the County Code

as well as an updated version of Enforcement Rules for the Planning Board (Attachment Four). The Planning Board submitted proposed Enforcement Rules to the County Council last year, but they were returned pending the outcome of state legislation to grant limited subpoena power to the Board. The proposed changes to the law and the proposed Enforcement Rules are all interconnected, and if they are implemented together will be the most effective means of addressing the previous difficulties with enforcement, including the Board's lack of subpoena power. The purpose of this memorandum is to introduce this Enforcement Package and provide an overview of the changes to the law and the proposed Enforcement Rules.

CHANGES TO THE COUNTY CODE

Section 50-41

Section 50-41 applies to enforcement of all Planning Board Actions, which includes all final decisions made by the Planning Board except decisions made under Chapter 22A. Numerous changes are proposed for this Section to ensure consistency, increase clarity, and provide the necessary structure to enable the Planning Board to penalize violators while also allowing violators due process rights and opportunities to correct the violation prior to an enforcement hearing.

One of the most significant changes in this Section allows for an Administrative Civil Penalty to be assessed at an enforcement hearing, similar to the remedy provided in Chapter 22A for violations of the Forest Conservation Law with established factors for the Planning Board to use in a fair and systematic way when imposing such a penalty.. This change is proposed for many reasons. First, current law is subject to interpretation that limits the Planning Board to a Civil Fine (\$1,000 under the proposed changes per ZTA 09-03 currently before the Council, or \$500 under the existing law), even for significant site plan violations. This Civil Fine is so insignificant that it has become the norm for a violator to ask forgiveness of the Board rather than permission to alter an approved plan. Further, if the violation is too difficult to correct, such as the placement of a building in a location other than as approved, the Planning Board may find it imprudent to order compliance, and the Civil Fine is not enough of a deterrent. The ability for the Planning Board to set an Administrative Civil Penalty in cases such as these is imperative to ensure that Planning Board approvals are upheld and the public can rely on these approvals.

The changes to Section 50-41 restructure appeals of Notices of Violations and Citations to be decided by the Planning Board. The law currently allows Citations to be appealed to District Court. District Court judges are tasked with moving along an overloaded docket, and they rarely have the time or inclination, much less the understanding of the nature of the Board's actions to effectively enforce the violation. If

a Citation is appealed to the District Court, the District Court cannot step in and tell a violator what aspects of an approved plan can be changed or develop a compliance plan for the violator. The appropriate venue for these enforcement actions is in front of the Planning Board, which has sole authority over the approved plans. The Planning Board's decision can then be appealed to Circuit Court as a judicial review proceeding. This change will ensure that enforcement hearings are procedurally appealed in the same way as all other Planning Board actions. The change will also allow alleged violators an opportunity to be heard in a low cost and informal proceeding and will provide the public an opportunity to be heard much the same as in the original action for which the violation is alleged.

Additional changes to this section serve to clarify and improve the enforcement process. These changes include adding Notices of Violation as another enforcement tool to give an alleged violator the opportunity to correct a violation before any Civil Fine is issued or a hearing occurs. This is especially helpful for violations that were inadvertent and are easy to fix. The changes to this Section also allow the Planning Board to delegate the findings of fact to a Hearing Officer who will submit a recommendation to the Board, similar to the way that a staff recommendation is made to the Board for its regulatory action. The Board retains the authority to make the final decision and determine whether the outcome of the hearing includes an Administrative Civil Penalty, Civil Fine, compliance plan, or other remedy as provided by law.

Chapter 59

For the purposes of the Planning Board, violations of Chapter 59 only apply to the enforcement of Site Plans. The changes to Section 59-A-1.3 have already been included with ZTA-09-03 but are also included here in case ZTA 09-03 does not pass. As previously discussed with ZTA 09-03, those changes include raising the initial Civil Fine from \$500 to \$1,000 and separating the enforcement of Planning Board Actions from other enforcement measures by the Department of Permitting Services under Chapter 59. The changes to Section 59-D-3.6 include clarification of the Board's authority to impose an Administrative Civil Penalty. The importance of having the Planning Board enforce its own actions, and the value of extending the Administrative Civil Penalty has been addressed in the discussion of Section 50-41.

Chapter 22A

The proposed changes to Chapter 22A are to create a consistent enforcement process for all Planning Board Actions, specifically aligning Chapter 22A enforcement with Section 50-41 enforcement. The changes provide the right for the Planning Director to issue Notices of Violation and Citations that are appealable to the Planning Board and to allow the Planning Board to designate a Hearing Officer for its

enforcement cases¹. Other changes to this Chapter are to clarify some of the ambiguities in the law and to make it consistent with the Forest Conservation Regulations.

ENFORCEMENT RULES RE-DRAFT

Within the last year, the Board reviewed and adopted Draft Enforcement Rules that were then transmitted to the County Council. The Rules were drafted primarily to allow the Planning Board to hire a Hearing Officer with subpoena power, assuming such authority was granted by a change in the state law. The County Council postponed acting on the Draft Enforcement Rules until the Board received such authority. Unfortunately, the proposed legislation has failed for two consecutive years in Annapolis for reasons unrelated to the rationale behind the bill.

This Enforcement Package includes updated Enforcement Rules that are no longer linked to whether the Board obtains subpoena power. By expanding the ability of the Board to designate a Hearing Officer, the Board is able to take advantage of such authority held by other qualified agencies and entities such as the State's Office of Administrative Hearings. These Rules are necessary for the success of the entire enforcement program. Specifically, the proposed Enforcement Rules lay out the hearing procedures for the Hearing Officer and the Planning Board including pre-hearing procedures, evidentiary rules, and time limitations. The purpose of these Rules is to establish effective procedures for the Planning Department and Planning Board to follow in enforcement cases. These Rules provide guidance to alleged violators about the Planning Board's enforcement procedures and ensure adequate due process. In addition, the proposed Rules provide notice to the public about the Planning Board's enforcement process. The Enforcement Rules work in conjunction with the proposed law changes to establish an efficient and effective enforcement program for Planning Board actions.

RECOMMENDATION

We recommend that the Planning Board vote to adopt the Enforcement Rules, and that they approve the Zoning Text Amendment, the Subdivision Regulation Amendment, and Bill for Chapter 22A for transmittal to the County Council for further action.

Attachment One - proposed revisions to Chapter 50, the Subdivision Regulations
Attachment Two- proposed revisions to Chapter 59, the Zoning Ordinance
Attachment Three- proposed revisions to Chapter 22A, the Forest Conservation Law
Attachment Four- proposed Enforcement Rules

¹ The ability to assess an Administrative Civil Penalty already exists in Chapter 22A.

ATTACHMENT ONE

Ordinance No. _____
Subdivision Regulation Amend. No. 09-____
Concerning: Enforcement Provisions
Revised: _____ Draft No. 1
Introduced: _____
Public Hearing: _____
Adopted: _____
Effective: _____

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN**

By: District Council at the Request of the Planning Board

AN ACT to:

- (1) revise the enforcement provisions for violation of a Planning Board action

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
Section 50-41, Enforcement

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 Sec. 1. Section 50-41 is amended as follows:

2 **Sec. 50-41. Enforcement.**

3 (a) *Definitions.* In this section, these terms have the following meanings:

4 (1) Administrative Civil Penalty. A requirement to pay a monetary sum for
5 violating a Planning Board Action as imposed by the Planning Board in
6 accordance with this Section.

7 (2) *Citation.* A document noting a violation of a Planning Board Action,
8 seeking to impose a [civil fine] Civil Fine and/or [penalty] corrective action.

9 (3) *Civil Fine [or Penalty].* A requirement to pay a predetermined monetary
10 sum upon [the issuance of a citation for] violation[ng] of a Planning Board
11 Action.

12 ([3]4) *Enforcement Agent.* The Planning Director, or the Director's designee
13 responsible for determining compliance with a Planning Board Action.

14 (5) Notice of Hearing. An administrative notice issued by the Planning
15 Director or the Planning Director's designee that notifies an alleged violator of the
16 location, date, and time of which an enforcement hearing before the Planning
17 Board or the Planning Board's designee will be held to address the alleged
18 violation.

19 (6) Notice of Violation. A notice issued by an Enforcement Agent notifying a
20 person of a violation and the remedial action that must be taken to avoid further
21 enforcement actions.

22

23 ([4]7) *Person.* An individual, partnership, corporation, organization, or other
24 entity, or combination thereof, whether singular or plural that owns property or
25 otherwise has an interest or responsibility for property that was the subject of a
26 Planning Board Action.

27 ([5]8) *Planning Board Action.* A final decision on a preliminary plan, site plan,
28 project plan, supplementary plan, water quality plan or other plan, including all
29 associated terms, conditions, requirements and other obligations or limits, made
30 by the Planning Board under state law and Chapters 50 and 59, including any
31 regulations issued under state or County law. A Planning Board Action does not
32 include a decision made by the Board under Chapter 22A.

33 ([6]9) *Planning Director.* The staff member in the [Department of Park and
34 Planning] Maryland-National Capital Park and Planning Commission who is in
35 charge of all planning, zoning, and land development approval activities [of the
36 Department] for the Commission, and who reports directly to the Planning Board.

37 ([7]10) *Stop Work Order [or Corrective Order].* An administrative order issued by
38 an Enforcement Agent requiring a person to discontinue any further development,

39 construction, or other land disturbance activity authorized by a Planning Board Action
40 until a violation has been corrected.

41 **[(b) *Citation; Civil Fine or Penalty.***

42 (1) The Enforcement Agent may deliver a citation to a person believed to be in
43 violation of a Planning Board Action. The Planning Board will retain a copy of the
44 citation. The citation must include a certification by the Enforcement Agent attesting to
45 the truth of the matters set forth in the citation.

46 (2) The citation must contain at least the following information:

- 47 a. The name and address of the person charged;
- 48 b. The nature of the violation;
- 49 c. The place where and the approximate time that the violation occurred;
- 50 d. The amount of the fine assessed;
- 51 e. The manner, location, and time in which the fine may be paid and the
52 party to whom the fine should be paid;
- 53 f. The date by which the payment must be made; and
- 54 g. A statement advising the person of the right to elect to stand trial for the
55 violation.

56 The Planning Board may utilize any citation consistent with this Section, including the State of
57 Maryland Uniform Civil Citation form.]

58

59 **(b) *Notice of Violation.***

60 (1) The Planning Director or the Planning Director's designee may issue a Notice
61 of Violation to a person believed to be in violation of a Planning Board Action. The
62 Planning Director or the Planning Director's designee will retain a copy of the Notice
63 of Violation. A Notice of Violation issued under this Section must be served on the
64 alleged violator personally, on the violator's agent at the activity site, or by certified
65 mail to the violator's last known address.

66 (2) The Notice of Violation must contain at least the following information:

- 67 a. The name and address of the person charged;
- 68 b. The nature of the violation;
- 69 c. The place where and the approximate date that the violation occurred;

70 d. A statement advising the violator of the corrective or remedial action to be
71 taken and the date by which the corrective or remedial action must occur. The
72 corrective or remedial action may include a meeting with Commission Staff to
73 determine a compliance plan.

74 e. A statement advising the violator of the right to a hearing before the Planning
75 Board or the Planning Board's designee.

76 (c) Citations.

77 (1) The Planning Director or the Planning Director's designee may deliver a
78 Citation to a person believed to be in violation of a Planning Board Action. The
79 Planning Director or the Planning Director's designee will retain a copy of the
80 Citation. The Citation must include a certification by the Planning Director or the
81 Planning Director's designee attesting to the truth of the matters set forth in the
82 Citation. A Citation issued under this Section must be served on the alleged
83 violator personally, on the violator's agent at the activity site, or by certified mail
84 to the violator's last known address.

85 (2) The Citation must contain at least the following information:

- 86 a. The name and address of the person charged;
- 87 b. The nature of the violation;
- 88 c. The place where and the approximate date that the violation occurred;
- 89 d. The amount of the fine assessed;
- 90 e. The manner, location, and time in which the fine may be paid and the
91 party to whom the fine should be paid;
- 92 f. The date by which the payment must be made; and
- 93 g. A statement advising the violator of the right to a hearing before the
94 Planning Board or the Planning Board's designee.

95 The Planning Board may use any Citation consistent with this Section, including the State of
96 Maryland Uniform Civil Citation form.

97 (d) Notice of Hearing.

98 (1) The Planning Director or the Planning Director's designee may issue a Notice
99 of Hearing, which must be served on the alleged violator personally, or the violator's
100 agent at the activity site, or by certified mail to the violator's last known address.

101 (2) The Notice of Hearing must contain at least the following information:

- 102 a. The name and address of the person charged;

- 103 b. The nature of the violation;
- 104 c. The place where and the approximate date that the violation occurred;
- 105 d. A statement advising the violator of the date, time, and location of the
- 106 hearing before the Planning Board or the Planning Board's designee.

107
108

109 *([c]e)Imposition of Civil Fines and Penalties.*

110 (1)A [c]Citation may require the payment of a [c]Civil [f]Fine [or penalty] for the alleged
111 violation of the Planning Board Action.

112 (2)The maximum amount of the fine for each violation of a Planning Board Action is
113 \$1,000.00 for the initial violation and \$500.00 for each day that the violation [has occurred]
114 continues.

115 (3) Each day that the violation has not been corrected must be considered a separate
116 violation and the applicable fine [or penalty] will continue to accrue each day until
117 corrected, without the need of issuing a new [c]Citation each day.

118 (4) In addition to other remedies provided under this Article, a person who violates a
119 Planning Board Action, any regulations adopted under it, or any associated agreements or
120 restrictions may be subject to an Administrative Civil Penalty.

121 (5) In determining the amount of the Administrative Civil Penalty, the Planning
122 Board or the Planning Board's designee must consider:

- 123 (a) the wilfullness of the violation;
- 124 (b) the degree of deviation from the approved Planning Board Action;
- 125 (c) the cost of corrective action or restoration;
- 126 (d) any adverse impact on the community;
- 127 (e) the extent to which the current violation is part of a recurrent pattern of the
- 128 same or similar type of violation committed by the violator;
- 129 (f) any economic benefit that accrued to the violator or any other person or entity
- 130 as a result of the violation;
- 131 (g) the actual cost to implement the conditions set forth in the applicable Planning
- 132 Board Action;
- 133 (h) the degree of cooperation shown, or voluntary mitigation measures taken, by
- 134 the violator;

- 135 (i) the extent to which other persons or entities contributed to the violation;
 136 (j) the impact, if any, on the violator’s ability to perform corrective actions due to
 137 a change in ownership of the property; and
 138 (k) other relevant factors.

139 (6) The amount of the Administrative Civil Penalty and the Planning Board’s reasoning for
 140 imposition of such Administrative Civil Penalty must be provided in a written resolution of
 141 the Planning Board and included in its administrative order.

142

143 ([d]f) [Request for District Court Review]Hearing.

144 (1) A person who receives a [c]Citation imposing a [c]Civil [f]Fine or [penalty]
 145 a Notice of Violation may elect [to stand trial for the offense] a hearing before the
 146 Planning Board or its designee by filing with the Planning Board a Request for
 147 Hearing[notice of intention to stand trial]. The [notice of intention] Request for
 148 Hearing must be [given to] received by the Chairman of the Montgomery County
 149 Planning Board [no less than 5 days before the date that the payment is due as
 150 established on the citation.] within fifteen days of receipt of the Citation or Notice
 151 of Violation. The matter must be expeditiously scheduled on a Planning Board
 152 agenda unless the alleged violator consents to a delay. The filing of a request for a
 153 hearing does not stay an administrative order to stop work, stabilize a site, or stop
 154 a violation.

155 (2) If the Planning Board or the Planning Board’s designee elects to hold a
 156 hearing on a given matter under this Article, a Notice of Hearing in accordance
 157 with this Article will be issued stating the date on which the action is scheduled to
 158 be considered by the Board. [Upon receipt of the notice of intention to stand trial,
 159 the Planning Board will forward to the District Court having venue a copy of the
 160 citation and the notice of intention to stand trial. On receipt of the citation, the
 161 District Court will schedule the case for trial and notify the defendant of the trial
 162 date].

163 (3) The Planning Board may assign a hearing officer designated by the
 164 Planning Board, including a Hearing Examiner from the Office of Zoning and
 165 Administrative Hearings, to conduct a public hearing and submit a report and
 166 recommendation on any alleged violation of this Chapter. The hearing officer
 167 must submit the required report and recommendation to the Planning Board not
 168 later than 60 days after the hearing record closes, but the hearing officer may by
 169 order extend the time to file the report.

170

171 (4) All fines, penalties, or forfeitures collected by the Planning Board [or
 172 District Court] for the violations will be remitted to the Planning Board, placed in
 173 the general funds of the Maryland-National Capital Park and Planning
 174 Commission and may be utilized by the Commission for project corrections, plan
 175 enforcement or other Commission purposes. The Commission, in its sole
 176 discretion, may utilize collected fines or penalties to perform or correct some or
 177 all of the violations noted in the [c]Citation, without obligating the Commission to
 178 undertake project corrections in lieu of the developer.

179 ([e]g) *Failure to Pay Fine [or Penalty].*

180 (1) If a person who receives a [c]Citation for a violation, does not timely pay the fine
 181 by the payment due date as established in the [c]Citation and fails to file a Request for
 182 Hearing [notice of intention to stand trial], a formal notice [of the violation] must be sent
 183 to the person's last known address. If the [c]Citation is not satisfied within 15 days from
 184 the date of the notice, the person is liable for an additional fine not to exceed twice the
 185 original fine.

186 (2) If, after 35 days, the [c]Citation is not satisfied, the Planning Board will set the
 187 matter for a hearing and may impose any Civil Fine and/or Administrative Civil Penalty
 188 authorized by this section. In addition, the Planning Board may: [may request
 189 adjudication of the case through the District Court. The District Court will schedule the
 190 case for trial and summon the defendant to appear.]

- 191
- 192 (i) suspend or revoke the plan that is the subject of a Planning Board Action;
 - 193 (ii) approve a compliance program including any or all remedial action to be
 194 taken;
 - 195 (iii) require the violator to post a bond or other surety to guarantee completion
 196 of a compliance program;
 - 197 (iv) allow the violator to propose modifications to the plan; or
 - 198 (v) take any combination of these actions.

199

200 ([f]h) *Prosecution by the Office of the General Counsel.* The Office of the General
 201 Counsel for the Maryland-National Capital Park and Planning Commission will prosecute a
 202 violation under this section.

203 ([g]i) *Conduct of Hearing.* Proceedings before the Planning Board or its designee [District
 204 Court] will be conducted in such manner as provided in the Planning Board Enforcement
 205 Rules, as adopted by the County Council. [Article 23A, Sections 3(b)(8) through (15) of the
 206 Maryland Code Annotated.]

207 [(h) *Payment of Court Costs.* A person found by the District Court to be in violation of a
 208 Planning Board Action will pay the costs of the proceedings in the District Court.]

209 [(i) *Issuance of Stop Work Orders[or Corrective Orders].*

210 (1) [In addition to the authority to impose civil fines and penalties,] The Enforcement
 211 Agent may also issue a stop work order in instances where the Enforcement Agent
 212 reasonably determines that:

- 213 a. a person is in violation of any element of a Planning Board Action, and
- 214 b. the public health, safety, or welfare are threatened or may be threatened because of
 215 the violation[; then Enforcement Agent may also issue a stop work order or corrective
 216 order].

217 (2) An order must include the following information as may be applicable:

- 218 a. The name and address of the person charged;
- 219 b. The nature of the violation;
- 220 c. The place where and the approximate [time] date that the violation occurred;
- 221 d. A clear statement indicating the action that must be taken or discontinued to cure
 222 the violation including the requirement to prepare a plan of compliance.[]; and
- 223 e. The date, approximate time, and location for the Planning Board hearing to review
 224 the order.]

225 The order must include a certification by the Enforcement Agent attesting to the truth of the
 226 matters set forth in the order.

227 (3) The Enforcement Agent must prominently display the order in close proximity to
 228 the location where the violation has occurred. In addition, the Enforcement Agent may
 229 deliver or mail, as practical, a copy of the order to the last known address of the person
 230 that secured approval of the Planning Board Action.

231 (4) When an order has been posted, the recipient must immediately discontinue any
 232 further development or construction activities authorized in accordance with the Planning
 233 Board Action until such time as the order is rescinded. An order posted by the
 234 Enforcement Agent has the effect of suspending the entire underlying Planning Board
 235 plan approval, unless:

236 a. the Planning Board in its consideration of the Planning Board Action approved
 237 phasing for the project; and

238 b. the Enforcement Agent determines that the violation only relates to either:

239 (i) a certain phase or phases of the project but not other phases of the same project; or

240 (ii) activities on a single lot or parcel.

241 In these instances, the order may only suspend the Planning Board's approval as it relates to
242 those phases or lots determined to be in violation.

243 (5) [Upon posting an order, the Enforcement Agent will schedule a review hearing
244 with the Planning Board at the Board's next available regular session] The recipient of an
245 order may request a hearing to contest the issuance of the order. In the event that a
246 hearing before the Planning Board is not practical in a reasonable period of time as
247 determined by the Enforcement Agent the matter may be reviewed by the Chairman or
248 Vice-Chairman of the Planning Board [or Vice-Chair]. A determination by the Chairman
249 or Vice-Chairman will have the same effect as if the Board acted under this section. The
250 Planning Board or Chairman, if applicable, will hear the case *de novo*. In the event the
251 violation is corrected and a plan of compliance prepared by the person prior to the
252 hearing as confirmed by the Enforcement Agent, the hearing will be cancelled.

253 (6) At the Planning Board hearing, the Enforcement Agent will indicate to the Board
254 the grounds and reasoning for issuing the order. The recipient must state all grounds
255 concerning why the order should be discontinued and may propose a plan of compliance
256 indicating how and when the violations will be corrected. The Planning Board will
257 determine if the order should be continued, modified, or rescinded and if a plan of
258 compliance should be approved. The Board's determination that the order should
259 continue has the effect of revoking the underlying Planning Board approvals for the
260 entire project or portions of the project as determined by the Board until such time as the
261 violation is corrected.

262 (7) An appeal of a decision of the Planning Board not to modify or rescind an order
263 will be administered as an administrative appeal filed with the circuit court, not as a
264 municipal infraction. The Board of Appeals does not have jurisdiction to review an
265 administrative appeal arising from a decision of the Planning Board.

266 (8) An order will be rescinded when the Planning Board or Enforcement Agent
267 determines that the violation or violations for which the order was issued [has] have been
268 satisfactorily corrected, which determination should not be unreasonably withheld or a
269 compliance plan has been approved by the Planning Board that addresses the violation or
270 violations.

271 ([j]k) *Other Remedies.* The authority to issue [c]Civil [f]Fines, Administrative Civil
272 [p]Penalties, and impose stop work orders are in addition to any other rights or authority of
273 the Planning Board to enforce its actions, including injunctive, declaratory, or other relief.
274 The election to pursue one remedy does not preclude the Planning Board from pursuing such
275 other available remedies as the Board deems appropriate.

276 ([k]l) *Exclusive Authority.* The Planning Board or its designee has exclusive authority to
277 enforce violations of a Planning Board Action. The authority granted in this Chapter
278 supersedes any authority for enforcing Planning Board Actions that may have been granted

279 to the Planning Board or any other officer, agent, or agency of Montgomery County or the
280 State of Maryland in Chapter 1 of the Code.

281
282 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
283 Council adoption.

284

285

286

287 *Approved:*

288

289

290 _____
Isiah Leggett, County Executive Date

291 *This is a correct copy of Council action.*

292

293

294 _____
Linda M. Lauer, Clerk of the Council Date

ATTACHMENT TWO

Zoning Text Amendment No: 09-
Concerning: Enforcement Provisions
Draft No. & Date: 1 – 6/5/09
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend provisions for violations, penalties, and enforcement of a Planning Board action; and
- generally amend the provisions related to violations of the Zoning Ordinance.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-1 “PURPOSE AND APPLICABILITY”
Section 59-A-1.3 “Violations, penalties, and enforcement”
DIVISION 59-D-3 “SITE PLAN.”
Section 59-D-3.6 “Failure to comply”

| |
|--|
| <p>EXPLANATION: <i>Boldface indicates a heading or defined term.</i> <i><u>Underlining</u> indicates text that is added to existing laws by the original text amendment.</i> <i>[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.</i> <i><u>Double underlining</u> indicates text that is added to the text amendment by amendment.</i> <i>[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.</i> <i>* * * indicates existing law unaffected by the text amendment.</i></p> |
|--|

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. DIVISION 59-A-1 is amended as follows:**

2 **DIVISION 59-A-1. PURPOSE AND APPLICABILITY**

3 * * *

4 **Sec. 59-A-1.3. Violations, penalties, and enforcement.**

5 * * *

6 (c) In addition to all other remedies provided by law, any violation of a
7 Planning Board Action as defined in 50-41 may be enforced as enumerated
8 here and in Chapter 50-41 and be punished by a civil fine not exceeding
9 \$1,000.00 for the initial violation and \$500.00 for each day that the violation
10 continues.

11 ~~[(c)]~~(d) The Planning Board may assign a hearing officer designated by the
12 Planning Board, including a Hearing Examiner from the Office of Zoning
13 and Administrative Hearings, to conduct a public hearing and submit a
14 report and recommendation on any alleged violation of this Chapter or any
15 other Planning Board Action as defined in Section 50-41. The hearing
16 officer must submit the required report and recommendation to the Planning
17 Board not later than 60 days after the hearing record closes, but the hearing
18 officer may by order extend the time to file the report.

19
20 **Sec. 2. DIVISION 59-D-3 is amended as follows:**

21 **DIVISION 59-D-3. SITE PLAN.**

22 * * *

23 **Sec. 59-D-3.6. Failure to comply.**

24 * * *

25 (a) If the Planning Board finds, on its own motion or after a complaint is
26 filed with the Planning Board or the Department, and after giving due
27 notice to the applicant, the complainant, and all parties previously

28 before the Board on this plan and holding a public hearing or
29 receiving a report of a public hearing held by a designated hearing
30 officer, that any term, condition, or restriction in a certified site plan is
31 not being complied with, the Planning Board may:

32 (1) impose a civil fine or administrative civil penalty authorized by
33 Section 50-41;

34 (2) suspend or revoke the site plan;

35 (3) approve a compliance program which would permit the
36 applicant to take corrective action to comply with the certified
37 site plan;

38 (4) allow the applicant to propose modifications to the certified site
39 plan, or

40 (5) take any combination of these actions.

41 (b) If at the end of the effective period of any compliance program
42 approved by the Planning Board or the Planning Board's designee, the
43 Planning Board or the Planning Board's designee finds that the
44 applicant has not taken sufficient corrective action, the Planning
45 Board may, without holding further hearings, revoke the site plan or
46 take other action necessary to ensure compliance, including imposing
47 civil fines, penalties, stop work orders, and corrective orders under
48 Section 50-41. The Planning Board may obtain investigations and
49 reports as to compliance from appropriate County or State agencies.

50 * * *

51 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
52 Council adoption.

53

54 This is a correct copy of Council action.

55

56 _____

57 Linda M. Lauer, Clerk of the Council

ATTACHMENT THREE

Bill No. _____
 Concerning: Forest Conservation -
 Enforcement
 Revised: _____ Draft No. _____
 Introduced: _____
 Expires: _____
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: _____
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the Planning Board

AN ACT to:

- (1) Amend the forest conservation law to modify the number of required inspections and the notification period for inspections;
- (2) specify the penalty procedures for violations of the forest conservation law;
- (3) modify the hearing procedures for violations of the forest conservation law; and
- (4) generally amend the forest conservation law.

By amending

Montgomery County Code
 Chapter 22A, Forest Conservation
 Sections 22A-15 through 22A-17 and 22A-19 through 22A-21

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 22A-15 through 22A-17 and 22A-19 through 22A-21 are**
2 **amended as follows:**

3 **22A-15. Inspections and notification.**

4 (a) *Permission to gain access.* [Authorized representatives of]
5 Representatives authorized by the Planning [Department] Director may
6 enter properties subject to this Chapter for the purpose of inspection,
7 review, and enforcement.

8 (b) *Plan to be on site; field markings.* A copy of the approved forest
9 conservation plan must be available on the site for inspection by
10 [authorized] representatives authorized by the Planning Director. Field
11 markings must exist on site before and during installation of all
12 protective devices, construction, or other land disturbing activities.

13 (c) *Required inspections.*

14 (1) The Planning Department [should] must conduct [at least 3] field
15 inspections of a [tract subject to an approved forest conservation
16 plan. The inspections should take place as follows:] site to
17 confirm the information submitted on a Natural Resource
18 Inventory/Forest Stand Delineation.

19 [(1) The first inspection should take place before any land disturbing
20 activities (including clearing, grading, or stripping) occurs on the
21 tract to determine if protective measures have been properly
22 installed and conservation areas clearly marked;

23 (2) The second inspection should take place following completion of
24 all land disturbing activities and afforestation or reforestation to
25 determine the level of compliance with the forest conservation
26 plan; and

- 27 (3) The third inspection should take place at the end of the
28 maintenance agreement 2-year time period.]
- 29 (2) The Planning Director must conduct field inspection of a site
30 subject to an approved forest conservation plan as follows:
- 31 (A) after the limits of disturbance have been staked and
32 flagged, but before any clearing or grading begins;
- 33 (B) after necessary stress reduction measures have been
34 completed and the protection measures have been
35 installed, but before any clearing or grading begins;
- 36 (C) after completion of all construction activities to determine
37 the level of compliance with the forest conservation plan;
- 38 (D) before the start of any required reforestation and
39 afforestation planting;
- 40 (E) after required reforestation and afforestation have been
41 completed, to verify the planting is acceptable and begin
42 the maintenance and management period; and
- 43 (F) at the end of the maintenance and management period, to
44 determine the level of compliance with the planting plan
45 and, if appropriate, authorize release of financial security.
- 46 (3) The Planning Department must conduct field inspections of a site
47 subject to a tree save plan as follows:
- 48 (A) after the limits of disturbance have been staked and
49 flagged, but before any clearing or grading begins;
- 50 (B) after necessary stress reduction measures have been
51 completed and the protection measures have been
52 installed, but before any clearing or grading begins; and

53 (C) after completion of all construction activities to determine
 54 the level of compliance with the provisions of the tree
 55 protection plan.

56 (d) *Other inspections.* The Planning [Department] Director may [conduct
 57 other] authorize additional inspections or meetings as necessary to
 58 administer this Chapter[, including an inspection to confirm a forest
 59 stand delineation].

60 (e) *Required [notifications] scheduling of inspections for forest*
 61 conservation and tree save plans. A person must notify the Planning
 62 Director 7 days before scheduling an inspection under subsection (c).

63 [(1) At least 2 working days before starting any land disturbing
 64 activities associated with the forest conservation plan, a person
 65 must notify the Planning Department. The Planning Department
 66 must coordinate its inspections, and any pre-construction
 67 conferences, with the Department of Permitting Services to avoid
 68 inconsistent directives in the field relating to the forest
 69 conservation plan and sediment control activities.

70 (2) At least 2 working days before completion of afforestation and
 71 reforestation plantings, a person must notify the Planning
 72 Department so that the Department may schedule the second
 73 inspection specified under paragraph (c)(2) of this Section.]

74 **22A-16. Penalties and other remedies.**

75 (a) *Class A violation.* [Violation] Any violation of this Chapter or any
 76 regulations adopted under it is a Class A civil or criminal violation.
 77 [Notwithstanding Section 1-19, the] The maximum civil fine is \$1,000.
 78 Each day a violation continues [is] may be treated as a separate
 79 violation under this Chapter.

80 (b) *Enforcement authority.* The Maryland-National Capital Park and
81 Planning Commission has primary enforcement authority under this
82 Chapter. Administrative enforcement actions [are to] may be initiated
83 by the Planning Director [in accordance with] under this Article.

84 (c) *Civil and criminal actions.* The Commission may bring any civil or
85 criminal action authorized by law that the County may bring under
86 Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation
87 adopted under it. The Commission may also bring a civil action to
88 enforce a forest conservation plan and any associated agreements,
89 easements, and restrictions or to enforce an administrative order. These
90 remedies are in addition to any remedy that the Commission or County
91 may initiate under state or County law to enforce the terms of a
92 regulatory approval which incorporates a forest conservation plan.

93 (1) *Notice of Violation.*

94 (A) The Planning Director may issue a notice of violation to a
95 person believed to be in violation of this Chapter. The
96 Planning Director must retain a copy of the notice of
97 violation.

98 (B) A notice of violation issued under this Article must be
99 served on the alleged violator personally, on the violator's
100 agent at the activity site, or by certified mail to the
101 violator's last known address.

102 (C) The notice of violation must contain at least the following
103 information:

104 (i) the name and address of the person charged;

105 (ii) the nature of the violation;

- 106 (iii) the place where and the approximate date when the
107 violation occurred;
- 108 (iv) a statement advising the recipient of the corrective
109 or remedial action to be taken, which may include a
110 meeting with Commission staff to develop a
111 compliance plan, and the date by which the
112 corrective or remedial action must be completed;
113 and
- 114 (v) a statement advising the recipient of the right to a
115 hearing before the Planning Board or the Board's
116 designee.

117 (2) Citation.

- 118 (A) The Planning Director may issue a citation to a person
119 believed to be in violation of this Chapter. The Planning
120 Board may use any citation consistent with this Section,
121 including the State of Maryland Uniform Civil Citation
122 form. The Planning Director must certify the truth of the
123 allegations in the citation. The Planning Director must
124 retain a copy of the citation.
- 125 (B) A citation issued under this Article must be served on the
126 alleged violator personally, on the violator's agent at the
127 activity site, or by certified mail to the violator's last
128 known address.
- 129 (C) The citation must contain at least the following
130 information:
- 131 (i) the name and address of the person charged;
132 (ii) the nature of the violation;

- 133 (iii) the place where and the approximate date when the
134 violation occurred;
- 135 (iv) the amount of the fine assessed;
- 136 (v) the manner, location, and time in which the fine
137 may be paid, and the party to whom the fine must be
138 paid;
- 139 (vi) the date by which the fine must be paid; and
- 140 (vii) a statement advising the recipient of the right to a
141 hearing before the Planning Board or the Board's
142 designee.

143 (3) *Notice of Hearing.*

- 144 (A) The Planning Director may issue an administrative notice
145 that notifies an alleged violator of an enforcement hearing
146 to be held by the Planning Board or the Board's designee
147 to address the alleged violation.
- 148 (B) A notice of hearing issued under this Article must be
149 served on the alleged violator personally, on the violator's
150 agent at the activity site, or by certified mail to the
151 violator's last known address.
- 152 (C) The notice of hearing must contain at least the following
153 information:
 - 154 (i) the name and address of the person charged;
 - 155 (ii) the nature of the violation;
 - 156 (iii) the place where and the approximate date when the
157 violation occurred; and
 - 158 (iv) a statement advising the recipient of the date, time,
159 and location of the hearing.

160 (d) *Administrative civil penalty.*
 161 (1) In addition to any other [remedies provided] remedy under this
 162 Article, a person who violates this Chapter, any regulations
 163 adopted under it, a forest conservation plan, or any associated
 164 agreements or restrictions is liable for an administrative civil
 165 penalty imposed by the Planning Board This administrative civil
 166 penalty must not exceed the rate set by the County Council by
 167 law or resolution, except as provided in paragraph (3), but must
 168 not be less than the amount specified in Section 5-1608(c) of the
 169 Natural Resources Article of the Maryland Code. Each day a
 170 violation is not corrected is a separate violation.

171 (2) In determining the amount of the administrative civil penalty, or
 172 the extent of an administrative order issued by the Planning
 173 Director under Section 22A-17, the Planning Board or Planning
 174 Director must consider:

175 * * *

176 (4) The reasons for imposing [a] an administrative civil penalty must
 177 be provided [in a] by written [opinion] resolution of the Planning
 178 Board and included in its administrative order.

179 * * *

180 **22A-17. Corrective actions.**

181 (a) *Administrative order.* At any time, including during an enforcement
 182 action, the Planning Director may issue an administrative order
 183 requiring the violator to take one or more of the following actions
 184 within a certain time period specified by the Planning Director:

- 185 (1) stop the violation;
- 186 (2) stabilize the site to comply with a reforestation plan;

- 187 (3) stop all work at the site;
- 188 (4) restore or reforest unlawfully cleared areas;
- 189 (5) submit a forest conservation plan for the property;
- 190 (6) place forested or reforested land under long-term protection by a
- 191 conservation easement, deed restriction, covenant, or other
- 192 appropriate legal instrument; or
- 193 (7) submit a written report or plan concerning the violation.
- 194 (b) *Effectiveness of order.* An order issued under this Section is effective
- 195 according to its terms, when it is served.

196 * * *

197 **22A-19. Noncompliance with exemption conditions.**

198 * * *

199 (b) *Penalties for noncompliance.* In addition to any other [remedies]
200 remedy under this Chapter, the Planning Board may require a person in
201 noncompliance to:

- 202 (1) [meet the forest conservation threshold as would have been
- 203 required] prepare, submit, and implement a forest conservation
- 204 plan;
- 205 (2) pay an administrative civil penalty under Section 22A-16(d) for
- 206 the area of forest cut or cleared under the exemption; or
- 207 (3) both.

208 **22A-20. [Notice, hearings,] Hearings and appeals.**

209 * * *

210 (b) *Forest conservation plans and variances approved by the Planning*
211 *Board or District Council.*

- 212 (1) A person aggrieved by the decision of the Planning Board on the
- 213 approval, denial, or modification of a forest conservation plan

214 (including a request for a variance) may [file a judicial] appeal
215 [of] the final administrative action on the development approval
216 [in accordance with Subtitle B of] under the Maryland Rules of
217 Procedure and any other law applicable to the proceeding.

218 (2) A person aggrieved by the decision of the District Council on the
219 approval, denial, or modification of a forest conservation plan
220 (including a request for a variance) proposed in conjunction with
221 a development plan may file a judicial appeal of the action on the
222 development plan in accordance with Division 59-H-8.

223 (c) *Forest stand delineations and forest conservation plans approved by the*
224 *Planning Director.*

225 (1) *Appeal to Planning Board.* [Upon receipt of] After the Planning
226 [Director's] Director issues a written decision on a natural
227 resource inventory/forest stand delineation or forest conservation
228 plan, an applicant [has 30 days in which to] may appeal the
229 decision to the Planning Board within 30 days.

230 (2) *Hearing; decision.* The Planning Board must hold a de novo
231 hearing on the appeal [and inform the applicant in writing of its
232 decision. The Board must consider the appeal de novo]. The
233 Board must adopt a written resolution explaining its decision.
234 For purposes of judicial review, the decision of the Planning
235 Board [constitutes] is the final agency action.

236 (3) *Appeal.* [Upon receipt of] After receiving the Planning Board's
237 decision, an applicant [has 30 days in which to] may appeal the
238 decision within 30 days under [in accordance with Subtitle B of]
239 the Maryland Rules of Procedure.

240 (d) *Administrative enforcement actions.*

241 (1) *Notice.* A complaint, order, citation, notice of violation, or other
242 administrative notice, except a notice of hearing, issued by the
243 Planning Director under this Article [must be served on the
244 alleged violator personally, on the violator's agent at the activity
245 site, or by certified mail to the violator's last known address. The
246 notice must identify the alleged violator, the location of the
247 violation, and the specific facts of the violation, and] must give
248 the alleged violator the opportunity [for] to request, within 15
249 days after receiving the notice, a hearing before the Planning
250 Board or the Board's designee [within 10 working days of receipt
251 of the notice. If an administrative action under this Article can
252 only be taken by the Board, the notice must state the date on
253 which the action is scheduled to be considered by the Board].

254 (2) *Hearing.*

255 (A) If an alleged violator requests an opportunity for a hearing
256 [is requested], the matter must be expeditiously scheduled
257 on a Planning Board agenda unless the alleged violator
258 consents to a delay. The filing of a request for a hearing
259 does not stay an administrative order to stop work,
260 stabilized a site, or stop a violation.

261 (B) If the Planning Board or the Board's designee elects to
262 hold a hearing on an action under this Article, the Board
263 must issue a notice of hearing under this Article noting the
264 date when the Board is scheduled to be consider the action.

265 (C) The Planning Board may designate a hearing officer,
266 including a Hearing Examiner from the Office of
267 Administrative Hearings, to conduct a public hearing and

268 submit a report and recommendation on any alleged
 269 violation of this Chapter. The hearing officer must submit
 270 the required report and recommendation to the Board not
 271 later than 60 days after the hearing record closes, but the
 272 hearing officer may by order extend the time to file the
 273 report.

274 (3) *Decision.* The Planning Board must inform the alleged violator
 275 in writing of its decision on an administrative enforcement action.
 276 The Board's decision [constitutes] is the final agency action for
 277 purposes of judicial review.

278 (4) *Appeal.* [Upon receipt of] After receiving the Planning Board's
 279 decision, an aggrieved person [has 30 days in which to] may
 280 appeal the Board's action [in accordance with Subtitle B of]
 281 within 30 days under the Maryland Rules of Procedure.

282 **22A-21. Variance provisions.**

283 (a) *Written request.* [A person] An Applicant may request in writing a
 284 variance from this Chapter or any regulation adopted under it if the
 285 [person demonstrates] applicant shows that enforcement would result in
 286 unwarranted hardship [to the person]. A request for a variance [waives]
 287 suspends the time requirements in Section 22A-11 until the Planning
 288 Board acts on the request.

289 (b) *Application requirements.* An applicant for a variance must:
 290 (1) describe the special conditions peculiar to the property which
 291 would cause the unwarranted hardship;
 292 (2) describe how enforcement of [these rules] this Chapter will
 293 deprive the landowner of rights commonly enjoyed by others in
 294 similar areas;

- 295 (3) verify that State water quality standards will not be violated [or]
 296 and that a measurable degradation in water quality will not occur
 297 as a result of [the] granting [of] the variance; and
- 298 (4) provide any other information appropriate to support the request.
- 299 (c) *Referral to other agencies.* Before considering a variance, the Planning
 300 Board must [refer] send a copy of each request to the County Arborist,
 301 Planning [Department] Director, and any other appropriate [officials or
 302 agencies] agency for a written recommendation before acting on the
 303 request. [Recommendations must be] If a recommendation on the
 304 variance is not submitted to the Planning Board within 30 days [from
 305 the receipt by the official or agency of the request or] after the referral,
 306 the recommendation [should] must be presumed to be favorable.
- 307 (d) *Minimum criteria.* A variance [must not] may only be granted if it meets
 308 the criteria in subsection (a). However, a variance must not be granted
 309 if granting the request:
- 310 (1) will confer on the applicant a special privilege that would be
 311 denied to other applicants;
- 312 (2) is based on conditions or circumstances which [are the] result [of
 313 the] from actions by the applicant;
- 314 (3) [arises from] is based on a condition relating to land or building
 315 use, either permitted or nonconforming, on a neighboring
 316 property; or
- 317 (4) will violate State water quality standards or cause measurable
 318 degradation in water quality.
- 319 (e) *Approval procedures; Conditions.* The Planning Board[, or the District
 320 Council on a development plan,] must [make findings] find that the
 321 applicant has met all requirements of this Section before granting a

322 variance. [Appropriate] The Board may impose appropriate conditions
323 [may be imposed] to promote the objectives of this Chapter and protect
324 the public interest.

325 * * *

326 *Approved:*

327

Philip M. Andrews, President, County Council

Date

328 *Approved:*

329

Isiah Leggett, County Executive

Date

330 *This is a correct copy of Council action.*

331

Linda M. Lauer, Clerk of the Council

Date

ATTACHMENT FOUR

MONTGOMERY COUNTY PLANNING BOARD

ENFORCEMENT RULES

CHAPTER 1: SCOPE

1.1. Scope and Effectiveness of Rules. As permitted by law and except where the Montgomery County Code provides other enforcement procedures, these rules work in conjunction with the Montgomery County Code and govern all proceedings for enforcement of violations under:

- (a) Section 50-41, Chapter 59, and Chapter 22A of the Montgomery County Code; and
- (b) any other enforcement provisions of the Montgomery County Code administered by the Board.

1.2. Definitions.

1.2.1 *Applicability.*

In these rules and regulations, the following terms have the meanings indicated. Other terms have the meaning indicated in the Planning Board's Rules of Procedure.

1.2.2 *Definitions*

- (a) *Board or Planning Board.*

"Board" or "Planning Board" means the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

- (b) *Citation.*

"Citation" means a citation issued for violation of a Planning Board Action or a law or regulation under the Planning Board's jurisdiction.

- (c) *Enforcement Agent.*

"Enforcement Agent" means the Planning Director or his or her designee(s) responsible for determining compliance with a Planning Board Action or with any law or regulation that the Planning Board administers.

- (d) *Hearing Officer.*

"Hearing Officer" means an individual designated by the Planning Board to conduct hearings or proceedings. In the context of these rules, such a designee could be a Hearing Officer from the Office of Administrative Hearings.

(e) *Notice of Hearing.*

"Notice of Hearing" means an administrative notice issued by the Planning Director or the Planning Director's designee that notifies an alleged violator of the location, date, and time that an enforcement hearing before the Planning Board or the Planning Board's designee will be held to address the alleged violation.

(f) *Notice of Violation.*

"Notice of Violation" means a notice issued by an Enforcement Agent notifying a person of a violation and the remedial action that must be taken to avoid further enforcement actions.

(g) *Party.*

"Party" means an Enforcement Agent or a Respondent.

(h) *Planning Director.*

"Planning Director" means the Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission or the Director's designee.

(i) *Resolution.*

"Resolution" means the written opinion of the Planning Board in a regulatory matter.

(j) *Respondent.*

"Respondent" means an individual or entity charged with an alleged violation through the issuance of a Notice of Violation, Citation, or Notice of Hearing.

1.3. Filings with Planning Board. All documents permitted or required to be filed with the Planning Board under these Rules must be filed at the office of the Planning Board Chairman.

1.4. Form and Service of Documents

1.4.1 *Captions.* Each document filed with the Board must contain a caption that states:

- (a) the title of the action;
- (b) the Citation or Notice of Violation number or the docket number assigned to the proceeding; and
- (c) a brief descriptive title of the document that indicates its nature.

1.4.2 *Signature*

- (a) Every document (other than a Citation, Notice of Violation, or Notice of Hearing) from a Party represented by an attorney must be signed by at least one attorney who has been admitted to practice law in the State of Maryland. Every document (other than a Citation, Notice of Violation, or Notice of Hearing) from a Party who is not represented by an attorney must be signed by the Party.
- (b) The signature constitutes a certification that:
 - (i) the signatory has read the document;
 - (ii) to the best of the signatory's knowledge, information and belief, there are good grounds to support the information in the document; and
 - (iii) it is filed in good faith and not for purposes of delay.
- (c) Signature - Sanctions.

If a document is not signed as required (except in cases of an inadvertent omission that is promptly corrected) or is otherwise inconsistent with this rule, it may be stricken, and the action may proceed as though the document had not been filed.

1.4.3 *Service.*

- (a) This subsection applies to all documents, except for Citations, Notices of Violations, and Notices of Hearing, that are required to be served on other Parties.
- (b) If service is required on a Party represented by an attorney, service must be made on the attorney unless service on the Party is ordered by the Planning Board or the Hearing Officer.
- (c) Each document must be accompanied by a signed certificate of service that specifies the date and manner of service.

1.5. Computation of Time.

1.5.1 In general.

- (a) In computing any time period under these rules, the day of the act, event, or default is not included.
- (b) If the time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.
- (c) If the time allowed is 7 days or less, intermediate Saturdays, Sundays, and Commission holidays are not counted.
- (d) If the last day of the time allowed is a Saturday, Sunday, or Commission holiday, the time runs until the next day that is not a Saturday, Sunday, or Commission holiday.

1.5.2 Mailing.

When mail is used for service of any document (other than a Citation, Notice of Violation, or Notice of Hearing) on an opposing Party, the opposing Party has 3 additional days to take any action or make any response required or permitted by these rules.

1.6. Appearances.

1.6.1 Individuals.

An individual may appear:

- (a) on his or her own behalf; or
- (b) represented by an attorney licensed to practice in the State of Maryland.

1.6.2 Businesses, etc.

A business, non-profit organization, or government agency may appear:

- (a) represented by an attorney licensed to practice in the State of Maryland;
or
- (b) to the extent allowed by law, represented by any authorized officer, employee, or agent.

1.6.3 Failure to Appear.

If a Party fails to attend the hearing, the Hearing Officer or Planning Board may proceed with the hearing in the Party's absence.

1.7. Records.

1.7.1 *Planning Board to keep.*

The Planning Board must maintain files containing all documents, evidence, and other items and information submitted to or produced by a Hearing Officer or the Board during the course of a proceeding.

1.7.2 *Files to be public.*

These files must be available for public inspection under the Maryland Public Information Act.

CHAPTER 2 PRE-HEARING PROCEDURES

2.1 Conflicting Provisions for Pre-Hearing and Hearing Procedures

If the Office of Administrative Hearings or the County Hearing Examiner is designated as the Hearing Officer and there is a conflict between these rules and the rules that govern the designated Hearing Officer, the rules of that body will prevail.

2.2 Citation/ Notice of Violation/ Notice of Hearing.

2.2.1 *Commencement of Proceedings.*

All proceedings start with the issuance of a Citation, Notice of Violation, or Notice of Hearing on a form approved by the Board.

2.2.2 *Contents.* The Citation, Notice of Violation, or Notice of Hearing must contain at least the information enumerated in Section 50-41 of the Montgomery County Code.

2.2.3 *Service.*

A Citation, Notice of Violation, or Notice of Hearing may be served on a Respondent by certified mail or hand delivery.

2.2.4 *Filing.*

A copy of the served Citation, Notice of Violation, or Notice of Hearing must be filed with the Office of General Counsel.

2.3. Payments.

2.3.1 *In general.*

A Respondent may pay the Civil Fine indicated on the Citation in the manner and time directed by the Citation.

2.3.2 *Effect of payment.*

The payment of a Civil Fine does not prevent the holding of a hearing, imposition of an Administrative Civil Penalty, or requirement of further corrective action.

2.4. Pre-Hearing Requests to Reschedule.

2.4.1 *Hearing Officer may grant.*

Upon written request to the Hearing Officer or Planning Director and for good cause shown, the Hearing Officer or Planning Director may postpone a scheduled hearing or reschedule the hearing.

2.5. Consolidation.

In the interest of convenient, expeditious, and complete determination of cases involving the same or similar issues or the same Parties, the Hearing Officer may consolidate two or more Citations or Notices of Violation for adjudication at one hearing.

2.6. Discovery.

2.6.1 *In general.*

- (a) By written request received by the opposing Party no later than 14 days before the scheduled hearing, any Party is entitled to receive from an opposing Party:
 - (i) a list of the names of witnesses intended to be called; and
 - (ii) copies of documents intended to be submitted into evidence.
- (b) A Party must serve a written response to a request under this section on all Parties no later than 7 days after a request is received.

2.6.2 *Limitations.*

- (a) Pre-hearing discovery is limited to the matters described in §2.5.1(a).

(b) All other applications or motions for discovery, including depositions on oral examination, must be made to the Hearing Officer, and the Hearing Officer may order further discovery as appropriate.

2.6.3 *Supplemental responses.*

Any request for discovery made by a Party is deemed to be continuous, and supplemental responses must be provided by the opposing Party up to the date of the hearing.

2.6.4 *Sanctions.*

If any Party fails to properly respond to a lawful discovery request or order or wrongfully refuses to answer questions or produce documents, the Hearing Officer may take appropriate action, including, but not limited to, precluding evidence or witnesses of the offending Party or striking the pleadings or defenses of that Party.

CHAPTER 3 HEARING PROCEDURES

3.1. Scheduling; Notice.

3.1.1 *In general.*

The Board or the Hearing Officer shall give all Parties in a contested case not less than thirty days' written notice.

3.1.2 *Contents of Notice.*

The Notice of Hearing must state:

- (1) the date, time, place, and nature of the hearing;
- (2) the right to call witnesses, and to cross-examine any witness another Party calls, and to submit documents or other evidence under §3.13 of these Rules;
- (3) any applicable right to request subpoenas for witnesses and evidence and specify the costs, if any, associated with such a request;
- (4) that a copy of the hearing procedure is available;
- (5) that an individual may retain counsel to represent him or her, or may proceed *pro se*;

(6) that failure to appear for the scheduled hearing may result in an adverse action against the Party, up to and including entry of a default judgment against the Party; and

(7) that, unless otherwise prohibited by law, the Parties may agree to a stipulated set of facts and waive their right to appear at the hearing.

3.2. Timing of Hearing.

3.2.1 Accelerated hearing.

If the Respondent waives the 30 days notice and requests an accelerated hearing, the Planning Director may assign the case for an earlier hearing if all Parties of record agree to the waiver.

3.2.2 Preliminary hearing to determine if Stop Work Order should be continued.

The recipient of a Stop Work Order may request an immediate hearing to determine whether the Stop Work Order should remain in place pending a hearing on the merits. When such a preliminary hearing is requested, the Planning Board must schedule it for no later than 7 days after the date of request. In the event that a hearing before the Planning Board is not practical as determined by the Enforcement Agent, the matter may be reviewed by the Chairman or Vice-Chairman of the Planning Board. A determination by the Chairman or Vice-Chairman will have the same effect as if the Board acted under this section. The preliminary hearing will be limited to the issue of the Stop Work Order. The Planning Board must continue the Stop Work Order if the Planning Board finds that there is prima facie evidence of a Violation and that the public health, safety, or welfare are threatened or may be threatened by the removal of the Stop Work Order.

3.3. Conduct of Hearing.

3.3.1 Orderly.

All hearings must be conducted in an orderly manner.

3.3.2 Expedition.

- (a) Hearings must proceed with all reasonable speed and, to the extent practicable, must be held at one place and continue until concluded, except for brief recesses.
- (b) The Hearing Officer may grant brief adjournments, for good cause shown and consistent with the requirements of speed.

3.4. Record.

The Hearing Officer must arrange for recording of all hearings.

3.5. Order of Proceedings.

- (a) A case shall be called to order by the Hearing Officer.
- (b) The Hearing Officer shall explain the purpose and nature of the hearing.
- (c) The Hearing Officer may allow the Parties to present preliminary matters.
- (d) The order of presentation of the evidence will be as follows:
 - (i) presentation of opening statements, if any;
 - (ii) Enforcement Agent's case in chief, including cross-examination by the Respondent;
 - (iii) Respondent's case in chief including cross-examination by the Enforcement Agent;
 - (iv) Enforcement Agent's case in rebuttal;
 - (v) Respondent's closing argument; and
 - (vi) Enforcement Agent's closing argument.
- (e) Witnesses shall be sworn or put under affirmation to tell the truth.

3.6 Exclusion of Witnesses

(a) Except as otherwise provided in this section, Upon request by a Party, the Hearing Officer must exclude witnesses other than Parties from the hearing room, except when testifying.

(b) A Party, representative, witness, or spectator may not disclose to a witness excluded under this section the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during that witness' absence.

(c) A Party that is not an individual may designate an employee or officer as its representative to remain in the hearing room, even though the employee or officer may be a witness.

(d) An expert witness who is to render an opinion based on testimony given at the hearing may remain during the testimony.

(e) The Hearing Officer may exclude the testimony of a witness who receives information in violation of this section, or take other appropriate action.

3.7. General Duties and Powers of Hearing Officer.

3.7.1 General duties.

The Hearing Officer has the duty to:

- (a) conduct a fair and impartial hearing;
- (b) take all necessary action to avoid delay in the disposition of proceedings; and
- (c) maintain order.

3.7.2 General powers.

The Hearing Officer has all powers necessary to carry out his or her duties, including the power to:

- (a) administer oaths and affirmations;
- (b) issue discovery orders and rule on objections to those orders;
- (c) receive evidence;
- (d) regulate the course of the hearing and the conduct of the Parties and their representatives;
- (e) hold conferences for simplification of issues or for any other proper purpose;
- (f) question witnesses;
- (g) consider and rule on all procedural and other motions, including requests for adjournment; and
- (h) make and file recommended decisions with the Planning Board.

3.8. Ex Parte Communications.

A Hearing Officer may not receive any ex-parte communication from any person or Party, other than communications limited to ministerial matters.

3.9. Impartiality.

3.9.1 *In general.*

A Hearing Officer should recuse him- or herself from any hearing in which his or her impartiality might reasonably be questioned, including any instances in which the Hearing Officer:

- (a) has a personal bias or prejudice about a Party;
- (b) has personal knowledge of disputed evidentiary facts in the proceeding;
- (c) served as a lawyer in the matter in controversy or was professionally associated with another person while that person served as a lawyer in the matter in controversy;
- (d) has been a material witness to the matter;
- (e) has a financial interest in the subject matter in controversy or in a Party to the proceeding;
- (f) has any other interest that could be substantially affected by the outcome of the proceeding; or
- (g) knows that his or her spouse or dependent child:
 - (i) is serving as a lawyer in the matter in controversy or is professionally associated with another person who is serving as a lawyer in the matter in controversy;
 - (ii) is likely to be a material witness in the proceeding;
 - (iii) has a financial interest in the subject matter in controversy or in a Party to the proceeding; or
 - (iv) has any other interest that could be substantially affected by the outcome of the proceeding.

3.9.2 *Motion to recuse.*

- (a) A Party may request that the Hearing Officer recuse him-or herself for good cause shown. The Hearing Officer must rule on the request in the proceeding.
- (b) If the Hearing Officer denies the request, the Party may obtain a brief adjournment to seek review by the Planning Board.

3.9.3 *Notice of recusal.*

When a Hearing Officer recuses him-or herself from a proceeding, he or she must do so on the record and must notify the Planning Director of the recusal.

3.9.4 *Replacement.*

On recusal of a Hearing Officer, the Chairman of the Planning Board must appoint another Hearing Officer to conduct the hearing.

3.10. Maintaining Discipline.

3.10.1 *Power of Hearing Officer.*

After a warning, the Hearing Officer may bar any person from continued participation in a hearing or from the hearing room if that person refuses to comply with the Hearing Officer's directions or behaves in a disorderly, dilatory, or obstructive manner.

3.11. Amendments to Citation, Notice of Violation, or Notice of Hearing.

3.11.1 *Allowable amendments.*

The Hearing Officer may allow appropriate amendments to a Citation, Notice of Violation, or Notice of Hearing if doing so will facilitate the determination of a controversy on the merits. Amendments may be subject to conditions necessary to avoid injustice or unfair surprise to a Party.

3.11.2 *Conformance to evidence.*

When issues reasonably within the scope of a Citation, Notice of Violation, or Notice of Hearing, but not expressly raised by the Citation, Notice of Violation, or Notice of Hearing, are tried by the express or implied consent of the Parties:

- (a) the issues must be treated in all respects as if they had been raised by the Citation, Notice of Violation, or Notice of Hearing; and
- (b) the Citation, Notice of Violation, or Notice of Hearing may be amended at any time as necessary to make it conform to the evidence.

3.12. Burden of Proof.

The Enforcement Agent has the burden of proof to establish by a preponderance of the evidence that the Respondent has committed the Violation charged in the Citation, Notice of Violation, or Notice of Hearing.

3.13. Evidence.

3.13.1 In general.

- (a) Except as otherwise provided by these rules, formal rules of evidence and trial procedures do not apply.
- (b) Each Party in a contested case shall offer all of the evidence that the Party wishes to have made part of the record.

3.13.2 Probative evidence

The Hearing Officer may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence. Evidence shall be admitted, generally, in accordance with the standard embodied in State Government Article §10-213, Annotated Code of Maryland.

3.13.3 Hearsay

Evidence may not be excluded solely on the basis that it is hearsay, but the Hearing Officer may give hearsay evidence the weight that it deserves under the circumstances of the case.

3.13.4 Exclusions

The Hearing Officer may exclude evidence that is:

- (a) incompetent;
- (b) irrelevant;
- (c) immaterial; or
- (d) unduly repetitious.

3.13.5 Rules of privilege

The Hearing Officer shall apply a privilege that law recognizes.

3.13.6 *Scope of evidence*

On a genuine issue in a contested case, each Party is entitled to:

- (a) call witnesses;
- (b) offer evidence, including rebuttal evidence;
- (c) cross-examine any witness that another Party calls; and
- (d) present summation and argument.

3.13.7 *Documentary evidence*

The Hearing Officer may receive documentary evidence:

- (a) in the form of copies or excerpts; or
- (b) by incorporation by reference.

3.13.8 *Official notice of facts*

(a) The Hearing Officer may take official notice of a fact that is:

- (1) judicially noticeable; or
- (2) general, technical, or scientific, and within the specialized knowledge of the Commission.

(b) Before taking official notice of a fact, the Hearing Officer:

- (1) before or during the hearing, must notify each Party; and
- (2) must give each Party an opportunity to contest the fact.

3.13.10 *Evaluation*

The Hearing Officer may use his/her experience, technical competence, and specialized knowledge in the evaluation of evidence.

3.14. Interlocutory Appeals.

3.14.1 *Leave required.*

An interlocutory appeal from rulings of the Hearing Officer may be filed only with the Hearing Officer's consent.

3.14.2 *Criteria for leave.*

Leave to appeal will not be granted except on a finding that:

- (a) the ruling complained of involves substantial rights and will materially affect the final decision; and
- (b) a determination of its correctness before the hearing ends is essential to serve the interests of justice.

3.14.3 *Planning Board's discretion.*

The Planning Board may refuse to hear an interlocutory appeal in its discretion, even though leave to appeal was obtained from the Hearing Officer.

3.14.4 *Effect.*

An interlocutory appeal does not stay the proceeding or extend the time for the performance of an act, unless the Hearing Officer orders otherwise.

3.15. Stipulation in Lieu of Hearing.

3.15.1 *Stipulation authorized.*

The Parties may enter into a stipulation in lieu of further hearing before the Hearing Officer issues a recommended decision and order.

3.15.2 *Required elements.*

The stipulation must:

- (a) be in the manner and form set by the Planning Director; and
- (b) contain:
 - (i) the facts stipulated to;
 - (ii) the amount of the Civil Fine to be paid;
 - (iii) the amount of the Administrative Civil Penalty to be paid, if any;
 - (iv) the corrective action to be taken, if any; and

- (v) the effective date.

3.15.3 *Filing*

The Enforcement Agent must file the stipulation with the Hearing Officer and the Board, and serve a copy on the Respondent. The filing of the stipulation stays any deadlines for discovery, hearing, or issuance of an order in the proceeding before the Hearing Officer.

3.15.4 *Stipulation not appealable.*

Decisions and orders based on stipulations are not appealable.

3.16. Recommended Decisions.

3.16.1 *Hearing Officer to prepare.*

The Hearing Officer must prepare a recommended decision no later than 30 days after the completion of a hearing.

3.16.2 *Recommended decision.*

The Hearing Officer's decision must state:

- (a) findings of fact and conclusions of law; and
- (b) the Hearing Officer's reasons for its findings on all material issues.

3.16.3 *Recommended Decision.*

If the Hearing Officer recommends that the charges in the Citation, Notice of Violation, or Notice of Hearing be sustained, the Hearing Officer must prepare a recommended decision that includes a recommended Civil Fine, proposed Administrative Civil Penalty and/or any necessary corrective action.

- (a) Recommended Civil Fine.

The Hearing Officer may propose any Civil Fine permitted by law but may not exceed the amount set on the Citation.

- (b) Recommended Administrative Civil Penalty

The Hearing Officer may propose any Administrative Civil Penalty permitted by law.

- (c) Recommended Corrective Action.

If the Hearing Officer finds that the Respondent failed to comply with a Planning Board Action, the Hearing Officer must recommend compliance with the Planning Board Action or a compliance plan that may include an amendment to an existing Planning Board Action. Where the Hearing Officer finds that trees have been cut in Violation of a forest conservation plan or the forest conservation law, the Hearing Officer's recommended decision must include corrective measures.

3.16.4 *Filing.*

The recommended decision must be filed with the Chairman of the Planning Board and served on all Parties.

CHAPTER 4 PLANNING BOARD REVIEW

4.1 Exceptions.

Any person aggrieved by the recommended decision and order may file written exceptions with the Planning Board.

4.2 Filing.

The exceptions must be filed within 30 days after the recommended decision and order are mailed to the Parties.

4.3 Contents.

(a) The exceptions must contain:

- i. a concise statement of the issues presented;
- ii. specific objections to the findings of fact and conclusions of law in the recommended decision and order; and
- iii. arguments that present clearly the points of law and facts relied on in support of the position taken on each issue.

(b) a Respondent or the Planning Director may request that the Planning Board modify any corrective order, Civil Fine, or Administrative Civil Penalty recommended by the Hearing Officer, including a modification to the plan that the Respondent violated.

4.4 Answer.

A Party may file an answer opposing any exception no later than 20 days after the exceptions are served.

4.4.1 *Replies.*

No replies are permitted unless the Planning Board Chairman otherwise directs.

4.5 Transcripts.

A Party may apply in writing for a written copy of the transcript of the hearing at any time:

- (a) within the period allowed for filing exceptions; or
- (b) if later, within 30 days after the other Party has filed exceptions.

4.5.1 *Extension of time.*

If an application for a transcript is timely made under Section 4.5 of this section, the time within which exceptions must be filed is extended to 20 days from the date when the transcript is hand delivered or mailed to the Party who requested it.

4.5.2 *Fee.*

The Planning Board may charge a fee for the transcript, including the cost of transcription.

4.6 Applications to Extend Time.

An application to extend the time for filing exceptions or answers for any reason must be:

- (a) made in writing to the Chairman of the Planning Board; and
- (b) must demonstrate good cause for the requested extension.

4.7 Review to be on Record.

4.7.1 *In general.*

The Board must consider any exception only on the basis of the record developed before the Hearing Examiner.

4.7.2 *Record elements.* For this purpose, the record comprises:

- (a) the Citation, Notice of Violation, and/or Notice of Hearing;
- (b) the transcript of the hearing;
- (c) all briefs filed and exhibits received in evidence; and
- (d) the Hearing Officer's recommended decision.

4.7.3 *Witness credibility.*

The Board must give due regard to the Hearing Officer's opportunity to judge the credibility of any witnesses.

4.8 Public hearing

The Board must hold a public hearing to consider whether to adopt a recommended decision and any exceptions to it.

4.8.1 *Notice*

The Planning Director must provide public notice of the hearing at least 10 days prior to the hearing.

4.8.2 *Arguments*

Unless otherwise ordered by the Board, the Enforcement Agent and the Respondent must have up to 10 minutes to present arguments to the Board. Other persons may file a written request with the Office of the Chairman of the Planning Board for an opportunity to speak at the public hearing.

4.9 Decision and Resolution.

The Board may adopt the Hearing Officer's recommended decision and order in whole or in part, or remand the matter for further proceedings, and must issue a Resolution memorializing its decision. Under these Rules, the Planning Board is the final decision maker for purposes of Judicial Review.

4.10. Reconsideration.

4.10.1 *Petition*

Any Party may petition the Board to reconsider a Resolution no later than 10 days after the date of mailing of the Resolution. Any request for reconsideration must be in writing and filed with the Planning Director. The Chairman of the Planning Board may

waive the filing deadline for good cause shown. Any Party who requests reconsideration must serve a copy of its petition on every other Party. The petition for reconsideration must specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.

4.10.2 *Decision to Reconsider*

The Chairman must schedule any petition for reconsideration for Planning Board consideration as soon as practicable. A motion to reconsider may be made only by a member of the Planning Board who voted in the majority on the decision that is subject to reconsideration. The motion passes if it receives the vote of a majority of the Board members present and voting and each member voting on the motion participated in the decision to be reconsidered or read the record of the proceeding. A petition to reconsider (a) does not require notice to the public or the Parties other than by publication on the Planning Board agenda, and (b) may be taken without the appearance or testimony of the Parties. If the Planning Board votes to reconsider, the reconsidered Resolution is void.

4.10.3 *Notice of Hearing*

After the Board votes to reconsider a Resolution, the Chairman must promptly schedule a public hearing. At least 10 days before the hearing, the Planning Director must notify all Parties of: (a) the Planning Board's decision to reconsider the Resolution; (b) the date of the hearing; and (c) a reasonable summary of the reasons for reconsideration.

4.10.4 *Hearing*

The Board must conduct a public hearing as scheduled. The scope of the hearing must include the reason the Board cited for reconsideration of the Resolution and any other issue that the Board deems to be related.