

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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**MCPB**  
**Item # 7**  
**3/11/04**

**DATE:** March 5, 2004  
**TO:** Montgomery County Planning Board  
**VIA:** Carlton Gilbert, Zoning Supervisor  
**FROM:** Greg Russ, Zoning Coordinator  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To authorize the Office of the Hearing Examiner to hear all special exception cases without a request from the Board of Appeals; require the Office of the Hearing Examiner to schedule and hold a public hearing on any matter it is authorized to hear; authorize the Board of Appeals to add to, modify, or delete any condition to a special exception that is recommended by the Hearing Examiner; and generally amend the provisions regarding hearings for special exceptions.

**TEXT AMENDMENT:** No. 04-03  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** District Council at request of Hearing Examiner  
**INTRODUCED DATE:** February 10, 2004

**PLANNING BOARD REVIEW:** March 11, 2004  
**PUBLIC HEARING:** March 16, 2004; 1:30 p.m.

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**STAFF RECOMMENDATION:** APPROVAL

**PURPOSE OF THE TEXT AMENDMENT**

To authorize the Office of the Hearing Examiner to hear all special exception cases without a request from the Board of Appeals; require the Office of the Hearing Examiner to schedule and hold a public hearing on any matter it is authorized to hear; authorize the Board of Appeals to add to, modify, or delete any condition to a special exception that is recommended by the Hearing Examiner; and generally amend the provisions regarding hearings for special exceptions.

## BACKGROUND

The ZTA establishes that the Hearing Examiner has the responsibility of scheduling and conducting public hearings and providing written reports to the Board of Appeals on any petition for a special exception and on any other matter referred to the Hearing Examiner by the Board of Appeals. The proposed language modifications are depicted in the analysis section below.

## ANALYSIS

### Proposed Text Amendment

The proposed text amendment language is as follows:

**59-A-4.1 Authority and Powers. \* \* \***

**59-A-4.12. Powers. \* \* \***

**59-A-4.125 Hearing Examiner.**

*(a) [Upon request of the board of appeals and with the approval of 3 of its members, the] The [h] Hearing [e] Examiner's office [shall have] has the functions and duties of scheduling and conducting public hearings and rendering written reports and recommendations to the [c]County [b]Board of [a]Appeals on [specific] the following matters [pending before the board.]:*

*(1) any petition for a special exception; and*

*(2) upon request of the Board and with approval of 3 of its members, any other matter pending before the Board.*

*(b) Except as provided in Section 59-G-1.12, the [The c]County [b]Board of [a]Appeals [shall have] has the sole authority to render a decision upon the merits of [such petitions for special exceptions or other cases] any petition for a special exception or any other matter referred to the office by the [b]Board.*

*\* \* \**

**59-A-4.4 Public Hearings on Petitions and Appeals. \* \* \***

**59-A-4.41. Requirement and scheduling.**

*(a) Requirement. The Board or the Hearing Examiner must hold a public hearing on [all petitions] any petition for the grant of a special exception*

or variance and on [~~such other matters as may be~~] ~~any other matter as is~~ provided for by this Chapter or by the Board's Rules of Procedure.

(b) *Scheduling.*

(1) *The hearing in the case of any petition for grant of special exception must be held not sooner than 60 days following the mailing of the notice of the filing of the petition pursuant to Paragraph (a) of section 59-A-4.46. In the case of any other matter within the Board's purview such hearing may be held not sooner than 30 days after the notice is mailed.*

*The Board, with an affirmative vote of at least 3 members, may reduce the notice period required for public hearing on a petition for a variance or special exception, or on an appeal from an administrative action if:*

(A) *the Board finds that an emergency poses an immediate threat to the public health, safety, convenience, welfare or necessity; or*

(B) *a delay would impose an unusual individual or community hardship.*

*In a situation in which a property owner holds a valid building permit to construct a single-family or townhouse structure in a new residential subdivision and an error committed or discovered during the course of construction on the site results in a violation of the specified setback requirements in the zone in which the property is located, and the variance required to overcome this error would involve less than 10 percent of the particular setback requirement which had been violated, the Board may, in response to a written request by the property owner, and by unanimous vote of the members present, hear the appellant's appeal for a variance at the first regularly-scheduled Board of Appeals public hearing following the posting of the property in accordance with the*

requirements of section 59-A-4.43. ~~The appellant is required to file all documents and information required by section 59-A-4.23.~~

- (2) A hearing on a petition for a special exception filed in the case of a registered home occupation or home health practitioner's office found to be in violation of section 59-A-6.1 must be scheduled within 30 days, or as soon thereafter as the [Board's] Hearing Examiner's calendar permits. The [Board] Hearing Examiner does not have authority to grant to the applicant any extension of the hearing in such a case.

\* \* \*

**59-A-4.6 Public Hearings by [h]Hearing [e]Examiner.**

**59-A-4.61. Generally.**

\* \* \*

- (f) Any matter must be either approved or denied on the merits, or denied for want of the necessary total of affirmative votes or dismissed or allowed to be withdrawn. The Board may add to, modify, or delete any conditions to a special exception recommended by the Hearing Examiner. The Board may dismiss any petition or appeal if it finds that the application does not conform to any stated procedural requirements of this Article or if the petition or appeal is frivolous or filed for purposes of harassment. The Council or Board may allow an applicant to withdraw his application in accordance with subsection 59-A-4.25; provided, that if the request for withdrawal is made after publication of the notice of hearing, no application for a special exception for the land which is the subject of the application is allowed within the time limitation set forth in Section 59-A-4.123 after the date of the order of the Council or Board approving the withdrawal. If the application is not dismissed or allowed to be withdrawn, it must either be approved or denied on the merits, approved with modified conditions, or denied for want of the necessary total of affirmative votes. If an application is denied, a later application for a

*special exception for the land which was the subject of the previous application is subject to the limitations of Section 59-A-4.123.*

Currently, the Hearing Examiner has the functions and duties of scheduling and conducting public hearings only if the Board of Appeals requests such through approval by three of its members. The proposed amendment would authorize the Hearing Examiner' Office to hear all special exception cases without a request from the Board of Appeals. This proposed language change would simplify the procedure and eliminate administrative steps for cases to be heard by the Hearing Examiner. The proposed text also clarifies that the Board would continue to maintain the authority to modify, add to or delete special exception conditions recommended by the Hearing Examiner. Staff has no objection with the proposed text amendment.

### **RECOMMENDATION**

The staff supports the proposed text amendment to authorize the Office of the Hearing Examiner to hear all special exception cases without a request from the Board of Appeals; require the Office of the Hearing Examiner to schedule and hold a public hearing on any matter it is authorized to hear; authorize the Board of Appeals to add to, modify, or delete any condition to a special exception that is recommended by the Hearing Examiner; and generally amend the provisions regarding hearings for special exceptions. The proposed text amendment language is included as Attachment 1.

GR

#### Attachments

1. Proposed Text Amendment 04-03

# ATTACHMENT 1

Zoning Text Amendment No: ~~04-03~~  
Concerning: Special exceptions – Hearing Provisions  
Draft No. & Date: 1 – 2/03/04  
Introduced: February 10, 2004  
Public Hearing: March 16, 2004; 1:30 p.m.  
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 Board of Appeals

**AN AMENDMENT** to the Montgomery County Zoning Ordinance for the purpose of:

- authorizing the Office of the Hearing Examiner to hear all special exception cases without a request from the Board of Appeals;
- requiring the Office of the Hearing Examiner to schedule and hold a public hearing on any matter it is authorized to hear;
- authorizing the Board of Appeals to add to, modify, or delete any condition to a special exception that I recommended by the Hearing Examiner; and
- generally amending the provisions regarding hearings for special exceptions:

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

DIVISION 59-A-4    “COUNTY BOARD OF APPEALS”  
Section 59-A-4.1    “Authority and powers”  
Section 59-A-4.125 “Hearing examiner”  
Section 59-A-4.41   “Requirement and scheduling”  
Section 59-A-4.6    “Public hearings by [h] Hearing [e] Examiner”  
Section 59-A-4.61   “Generally

**EXPLANATION:** ***Boldface** indicates a heading or a defined term.*  
*Underlining indicates text that is added to existing laws by the original text amendment.*  
*[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*

*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*

*\* \* \* indicates existing law unaffected by the text amendment.*

### *ORDINANCE*

*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-4 is amended as follows:**

2   **59-A-4.1 Authority and Powers. \* \* \***

3   **59-A-4.12. Powers. \* \* \***

4   **59-A-4.125 Hearing Examiner.**

5           (a) [Upon request of the board of appeals and with the approval of 3 of its  
6           members, the] The [h] Hearing [e] Examiner's office [shall have] has  
7           the functions and duties of scheduling and conducting public hearings  
8           and rendering written reports and recommendations to the [c]County  
9           [b]Board of [a]Appeals on [specific] the following matters [pending  
10           before the board.];

11           (1) any petition for a special exception; and

12           (2) upon request of the Board and with approval of 3 of its  
13           members, any other matter pending before the Board.

14           (b) Except as provided in Section 59-G-1.12, the [The c]County [b]Board  
15           of [a]Appeals [shall have] has the sole authority to render a decision  
16           upon the merits of [such petitions for special exceptions or other  
17           cases] any petition for a special exception or any other matter referred  
18           to the office by the [b]Board.

19           \* \* \*

20   **59-A-4.4 Public Hearings on Petitions and Appeals. \* \* \***

21   **59-A-4.41. Requirement and scheduling.**

22           (a) Requirement. The Board or the Hearing Examiner must hold a public  
23           hearing on [all petitions] any petition for the grant of a special  
24           exception or variance and on [such other matters as may be] any other  
25           matter as is provided for by this Chapter or by the Board's Rules of  
26           Procedure.

27           (b) Scheduling.



28 (1) The hearing in the case of any petition ~~for grant of special~~  
29 exception must be held not sooner than 60 days following the  
30 mailing of the notice of the filing of the petition pursuant to  
31 Paragraph (a) of section 59-A-4.46. In the case of any other  
32 matter within the Board's purview such hearing may be held not  
33 sooner than 30 days after the notice is mailed.

34 The Board, with an affirmative vote of at least 3 members, may  
35 reduce the notice period required for public hearing on a  
36 petition for a variance or special exception, or on an appeal  
37 from an administrative action if:

38 (A) the Board finds that an emergency poses an immediate  
39 threat to the public health, safety, convenience, welfare  
40 or necessity; or

41 (B) a delay would impose an unusual individual or  
42 community hardship.

43 In a situation in which a property owner holds a valid building  
44 permit to construct a single-family or townhouse structure in a  
45 new residential subdivision and an error committed or  
46 discovered during the course of construction on the site results  
47 in a violation of the specified setback requirements in the zone  
48 in which the property is located, and the variance required to  
49 overcome this error would involve less than 10 percent of the  
50 particular setback requirement which had been violated, the  
51 Board may, in response to a written request by the property  
52 owner, and by unanimous vote of the members present, hear the  
53 appellant's appeal for a variance at the first regularly-scheduled  
54 Board of Appeals public hearing following the posting of the

55 property in accordance with the requirements of section  
56 59-A-4.43. The appellant is required to file all documents and  
57 information required by section 59-A-4.23.

- 58 (2) A hearing on a petition for a special exception filed in the case  
59 of a registered home occupation or home health practitioner's  
60 office found to be in violation of section 59-A-6.1 must be  
61 scheduled within 30 days, or as soon thereafter as the [Board's]  
62 Hearing Examiner's calendar permits. The [Board] Hearing  
63 Examiner does not have authority to grant to the applicant any  
64 extension of the hearing in such a case.

65 \* \* \*

66 **59-A-4.6 Public Hearings by [h]Hearing [e]Examiner.**

67 **59-A-4.61. Generally.**

68 \* \* \*

- 69 (f) Any matter must be either approved or denied on the merits, or denied  
70 for want of the necessary total of affirmative votes or dismissed or  
71 allowed to be withdrawn. The Board may add to, modify, or delete  
72 any conditions to a special exception recommended by the Hearing  
73 Examiner. The Board may dismiss any petition or appeal if it finds  
74 that the application does not conform to any stated procedural  
75 requirements of this Article or if the petition or appeal is frivolous or  
76 filed for purposes of harassment. The Council or Board may allow an  
77 applicant to withdraw his application in accordance with subsection  
78 59-A-4.25; provided, that if the request for withdrawal is made after  
79 publication of the notice of hearing, no application for a special  
80 exception for the land which is the subject of the application is  
81 allowed within the time limitation set forth in Section 59-A-4.123

82 after the date of the order of the Council or Board ~~approving the~~  
83 withdrawal. If the application is not dismissed or allowed to be  
84 withdrawn, it must either be approved or denied on the merits,  
85 approved with modified conditions, or denied for want of the  
86 necessary total of affirmative votes. If an application is denied, a later  
87 application for a special exception for the land which was the subject  
88 of the previous application is subject to the limitations of Section  
89 59-A-4.123.

90  
91 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
92 date of Council adoption.

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94 This is a correct copy of Council action.

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Mary A. Edgar, CMC

100 Clerk of the Council