



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item #8**  
**9/16/10**

**DATE:** September 7, 2010  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To make various administrative and technical amendments throughout the Zoning Ordinance.

**TEXT AMENDMENT:** No. 10-11  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Council President Floreen  
**INTRODUCED DATE:** July 20, 2010

**PLANNING BOARD REVIEW:** September 16, 2010  
**PUBLIC HEARING:** September 16, 2010; 1:30pm

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**STAFF RECOMMENDATION:** Approval to make various administrative and technical amendments throughout the Zoning Ordinance for the primary purposes of clarifying technical language (plain language changes), providing cost-saving measures, and adding more detail to support existing practices with respect to Hearing Examiner and District Council procedures and oral arguments on local map amendments.

The subject ZTA was sponsored by Council President Floreen at the request of the ZTA Advisers to make certain code provisions more concise, precise and decisive.

## **ANALYSIS**

A summary of the proposed changes, by general category, is discussed below.

I. Allow the Hearing Examiner discretion concerning extensions of time for submitting a report to the District Council (59-D-1.74(d)(2) & 59-H-5.12) and for approving the withdrawal of a local map amendment application (59-H-5.3(d))

The Hearing Examiner's office currently is required to forward a written report and recommendation to the District Council on various cases. The time period for submitting the report and recommendation depends on the type of application but

generally runs between 30 and 45 days from the close of the public hearing record. The District Council can extend the submittal time for the Examiner's report by resolution. This ZTA requests flexibility to allow the Hearing Examiner by order to extend the original time for submittal of the report by 30 days, without a formal District Council resolution. Any extensions beyond this time-frame must be done by District Council resolution at the request of the Hearing Examiner. Staff has no objection to this modification given the complexity of a number of the cases heard by the Hearing Examiner's office.

The ZTA provides explicit language giving the Hearing Examiner the authority to allow an applicant to withdraw an application for a local map amendment at any time and also ties any new application to reclassify the same property as the previous application to the established time limits and procedures of subsection 59-H-2.23 and to the language of subsection 59-H-6.6 (the District Council's authority for accepting withdrawal of a local map amendment application). Also the ZTA proposes modifications to subsection 59-H-6.6 that would make it clear that the District Council can determine that the time limits for reapplication under subsection 59-H-2.23 do not apply if a decision on the merits of the application was not actually made. This language is consistent with existing language under subsection 59-H-2.23. Staff recommends approval of these changes.

## II. Clarify the provisions for the location of gas pumps and driveways for filling station special exceptions

The ZTA proposes only plain language modifications to the provisions for automobile filling stations. No substantive changes are proposed.

## III. Delete obsolete hospital requirement

The special exception provisions for hospitals under Section 59-G-2.31 depict a number of specific conditions and standards for approving a hospital special exception proposal. Among these standards is a prerequisite resolution required from a now obsolete health services planning board approving the establishment of the hospital. Appropriately, the ZTA proposes to eliminate this requirement. Given the State requirement that any hospital must obtain a certificate of need from the Maryland Health Care Commission prior to being established, it would be redundant to include any such condition as part of the special exception review.

## IV. Refund of filing fees

Currently under Section 59-H-2.33, "Refund of filing fees", the District Council may refund up to 75 percent of the filing fee for a local map amendment under certain circumstances. The proposed ZTA will permit the District Council to

refund all or part of a filing fee based on the circumstances as currently exist. This amendment gives the District Council and Hearing Examiner, under certain circumstances, maximum flexibility in situations of undue hardship.

#### V. Oral argument

Within 10 days after the Hearing Examiner's report for a local map amendment is transmitted to the Council, any aggrieved party may request, in writing, an opportunity to present oral argument to the District Council before the District Council renders a decision on the local map amendment. The ZTA modifies Section 59-H-6 by adding clarifying details to the procedure for oral argument and codifying current practice pertaining to filing and rebuttal requirements.

#### VI. Text Amendments

Within 30 days of introduction of a text amendment, the Council must, by resolution, set a date and time for a public hearing on the proposed text amendment, unless the time is extended or the amendment is postponed indefinitely. The ZTA proposes to eliminate the requirement for a formal resolution to establish the public hearing date but maintains the 30-day period for setting the public hearing date. The remaining changes in Section 59-H-9 provide plain language clarifications.

GR  
Attachments

1. Proposed Text Amendment No. 10-11

# ATTACHMENT 1

Zoning Text Amendment No.: 10-11  
Concerning: Administrative and  
Technical Amendments  
Draft No. & Date: 1 – 7/9/10  
Introduced: July 20, 2010  
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**

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By: Council President Floreen

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- allow the Hearing Examiner to extend the time for various reports by 30 days;
- clarify the standards for the location of gasoline pumps and driveway for filling station special exceptions;
- repeal the requirement for a hospital special exception application to include a resolution by the non-existent health services planning board;
- allow the Hearing Examiner to refund filing fees and allow the withdrawal of a local map amendment application under certain circumstances;
- add detail to the procedures for oral arguments on local map amendments;
- delete the requirement to establish public hearing dates by resolution;
- update record keeping requirements and the provisions for Councilmembers to have knowledge of the record before voting;
- clarify procedures for rejecting a zoning text amendment; and
- generally amend administrative requirements.

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

DIVISION 59-D-1.	“DEVELOPMENT PLAN”
Section 59-D-1.7.	“Amendment of a development plan”
DIVISION 59-G-2.	“SPECIAL EXCEPTIONS— STANDARDS AND REQUIREMENTS”
Section 59-G-2.06.	“Automobile filling stations”
Section 59-G-2.31	“Hospitals”
DIVISION 59-H-2	“MAP AMENDMENTS—APPLICATIONS”
Section 59-H-2.3	“Filing fees—Local map amendments”
DIVISION 59-H-5	“HEARING EXAMINER”
Section 59-H.-5.12	“Report”

DIVISION 59-H-6	“ACTION BY DISTRICT COUNCIL, LOCAL MAP AMENDMENTS”
Section 59-H-6.5	“Oral argument”
DIVISION 59-H-9	“TEXT AMENDMENTS”
Section 59-H-9.31.	“Hearing required”
Section 59-H-9.32.	“Notice of hearing”
Section 59-H-9.34.	“Conduct of hearing”
Section 59-H-9.41.	“Action by council”

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

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

Division 59-D-1. DEVELOPMENT PLAN.

\* \* \*

**59-D-1.7. Amendment of a development plan.**

\* \* \*

**59-D-1.74. [Subsequent to] After approval by [district council] District Council.**

\* \* \*

(d) **Hearing [examiner's] Examiner's hearing, report, and recommendation.**

\* \* \*

(2) [The] In this instance, the Hearing Examiner must compile the administrative record [will, in this instance, be compiled] and forward a written report and recommendation to the District Council [by the office of zoning and administrative hearings] in the same manner as [the record is compiled for] a local map amendment application under Article 59-H. [The administrative record must be closed at the conclusion of the public hearing and the report and recommendation forwarded to the district council within 30 days of the close of the record, unless these time requirements are extended by the district council.] The Hearing Examiner by order may extend the 30-day time limit to submit the report for an additional 30 days. The District Council may further extend the time for the Examiner's report by resolution on request by the Hearing Examiner. The recommendations of the [hearing examiner] Hearing Examiner must be based on the evidence of record.

\* \* \*

**Sec. 2. DIVISION 59-G-2 is amended as follows:**

28 DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND  
29 REQUIREMENTS.

30 \* \* \*

31 **59-G-2.06. Automobile filling stations.**

32 \* \* \*

33 (b) In addition, the following requirements must be complied with:

34 \* \* \*

35 (5) [Gasoline pumps] Each gasoline pump or other service [appliances  
36 shall] appliance must be located on the lot at least 10 feet behind the  
37 building line; and all service, storage, or similar activities in  
38 connection with [such] the use [shall] must be conducted entirely  
39 within the building. There [shall] must be at least 20 feet between  
40 driveways on each street, and [all driveways shall] each driveway  
41 must be perpendicular to the curb or street line.

42 \* \* \*

43 **59-G-2.31. Hospitals.**

44 A hospital or sanitarium building may be allowed[, upon a finding by] if the  
45 [board] Board finds that [such use] it will not [constitute] create a nuisance because  
46 of traffic, noise, or the number of patients or persons [being] cared for; that [such  
47 use] it will not affect adversely the present character or future development of the  
48 surrounding residential community; and if the lot, parcel, or tract of land on which  
49 the buildings to be used [by such institution] are located conforms to the following  
50 minimum requirements; except[,] that, in the C-2 and C-O zones, the minimum  
51 area and frontage requirements [shall] do not apply:

52 \* \* \*

53 [(7) *Prerequisite.* A resolution by the health services planning board  
54 approving the establishment of the hospital shall be filed with the  
55 petition for a special exception.]

56 \* \* \*

57 **Sec. 3. DIVISION 59-H-2 is amended as follows:**

58 Division 59-H-2. MAP AMENDMENTS—APPLICATIONS.

59 \* \* \*

60 **59-H-2.3. Filing fees—Local map amendments.**

61 \* \* \*

62 **59-H-2.32. Amount of fee.**

63 (a) The [district council is hereby authorized to establish] District Council may  
64 set and amend by resolution differential filing fees for [applications for  
65 amendments to the] local zoning ordinance map amendments. [Such fees  
66 may be amended by the council from time to time. Such fees shall] The fees  
67 should be based on the costs of processing a zoning application.

68 (b) [No such] A resolution to establish or amend the filing fees [shall be adopted  
69 except following] may only be adopted after the District Council has held a  
70 public hearing on reasonable notice. No filing [fee shall be] fee is required  
71 [in connection with applications] for any application filed by the [district  
72 council] District Council or [other governmental agencies] another  
73 government agency, [except where such] unless the application is filed at the  
74 request of a person with a financial, contractual, or proprietary interest in the  
75 property [, in which event such person shall pay the fees as provided by  
76 resolution; provided, that the council]. The Council may, [in its discretion,]  
77 for good cause shown, waive [such] any required fee under [. Except as  
78 provided in] subsection 59-H-2.33[, no such fee shall be refunded unless the



79 application is withdrawn prior to the time it is ordered advertised for  
80 hearing].

81 **59-H-2.33. Refund of filing fees.**

82 (a) The [district council] District Council may refund [up to 75 percent of the]  
83 all or part of a filing fee if [one of the following circumstances exists]:

84 (1) [The] the application has not been advertised for public hearing;

85 (2) [The] the application has been advertised for public hearing but the  
86 applicant [has requested withdrawal] files a request to withdraw it  
87 within 90 days [following approval of] after a master plan, sector  
88 plan, sectional map amendment, or zoning text amendment[,] which  
89 materially affects the property is approved, or [commencement of]  
90 condemnation proceedings or public acquisition [concerning] of the  
91 subject property has been initiated; or

92 (3) [A demonstration by] the applicant [of exceptional or] shows that  
93 undue hardship will result if the refund is not [permitted] approved.

94 (b) The Hearing Examiner [is authorized to approve a] may refund[, of] a filing  
95 fee [not to exceed] less than \$25,000, if [one of the conditions] any condition  
96 of [(1), (2), or (3) of paragraph] subsection (a) [above] is satisfied.

97 (c) Notwithstanding [paragraph] subsection (a) [above], the [district council]  
98 District Council and the Hearing Examiner may [exercise its discretion]  
99 elect to not [to approve a filing fee] refund a filing fee, or may approve a  
100 partial refund [if it believes circumstances exist that make the refund  
101 unjustified].

102 \* \* \*

103 **Sec. 4. DIVISION 59-H-5 is amended as follows:**

104 Division 59-H-5. HEARING EXAMINER.

105 **59-H-5.1. Duties of [hearing examiner] Hearing Examiner.**

106 \* \* \*

107 **59-H-5.12. Report.**

108 (a) Within 45 days after the record on any application closes, the Hearing  
109 Examiner must forward to the District Council a written report, including a  
110 description of the application, findings, and a recommendation of approval  
111 or denial, or any other disposition of the application, together with detailed  
112 reasons for the recommendation. The Examiner may include any other  
113 matter of record which the Examiner finds relevant to a decision by the  
114 District Council. The Hearing Examiner, by order, may extend the time to  
115 file a report for an additional 30 days. The District Council may further  
116 extend the time for the Examiner's report by resolution.

117 \* \* \*

118 **59-H-5.3. Authority of [hearing examiner] Hearing Examiner.**

119 \* \* \*

120 (d) The Hearing Examiner may allow an applicant to withdraw an application  
121 for a local map amendment at any time. If a request for withdrawal is filed  
122 after the notice of hearing is published, an application to reclassify all or any  
123 part of the land in the previous application must not be filed within the time  
124 limit in subsection 59-H-2.23 unless the application satisfies subsection 59-  
125 H-6.6.

126 \* \* \*

127 **Sec. 5. DIVISION 59-H-6 is amended as follows:**

128 Division 59-H-6. ACTION BY DISTRICT COUNCIL, LOCAL MAP  
129 AMENDMENTS.

130 \* \* \*

131 **59-H-6.5. Oral argument.**

- 132 (a) (1) Within 10 days after [transmittal of] the [examiner's] Hearing  
 133 Examiner's report [as set forth in sections] prepared under Section 59-  
 134 D-1.74(d) [and] or 59-H-5.12 [concerning hearing examiner's reports]  
 135 is transmitted to the Council, any aggrieved party may request, in  
 136 writing, an opportunity to present oral argument [before the district  
 137 council prior to its rendering] to the District Council before the  
 138 District Council renders a decision.
- 139 (2) An aggrieved party includes any person or association [appearing and  
 140 participating] which participated in person, in writing, or by counsel at  
 141 the hearing before the [examiner] Hearing Examiner, or any party  
 142 who would be aggrieved by the [council's] Council's decision.
- 143 (3) [Such] Each request for oral argument must be filed with the District  
 144 Council and must be limited to matters contained in the record [as  
 145 completed] compiled by the [hearing examiner] Hearing Examiner.  
 146 Each request must concisely describe each finding or recommendation  
 147 in the Hearing Examiner's report to which the requester objects.
- 148 (4) The requester must send a copy of any request for oral argument to  
 149 the Hearing Examiner and each party who participated at the hearing,  
 150 as listed by the Hearing Examiner.
- 151 (5) Within 5 days after a request for oral argument is filed with the  
 152 Hearing Examiner's office, any interested party may rebut, in writing,  
 153 a request for oral argument or request to participate in oral argument if  
 154 oral argument is allowed. Any rebuttal must be concise and limited to  
 155 matters raised by the party who requested oral argument. Any rebuttal  
 156 to a request for oral argument must be sent to the Hearing Examiner  
 157 and each party who participated at the hearing, as listed by the  
 158 Hearing Examiner.

159           (6) Before any written material submitted by any party is distributed to  
160           the Council, the Hearing Examiner must redact any material not  
161           allowed under this subsection. If the Hearing Examiner redacts any  
162           material, before oral argument is held the Hearing Examiner must  
163           send a copy of the material distributed to the Council to the party who  
164           submitted the redacted material.

165   **(b)**   The [district council] District Council may, in its discretion, grant or deny  
166           [such] a request for oral argument. The [district council] District Council  
167           may, on its own motion, require oral argument on any aspect of the case.

168           When oral argument is allowed, the Council must:

169           (1) set the day and time for oral argument;

170           (2) limit oral argument to specific topics;

171           (3) set time limits for oral argument; and

172           (4) specify the order of presentations.

173   **(c)**   Each oral argument must be limited to matters contained in the record  
174           compiled by the Hearing Examiner.

175   **(d)**   [Thereafter, the district council] After oral argument, the District Council  
176           must either decide the application [as hereinafter provided, or reassign] or  
177           remand the application to the [examiner] Hearing Examiner for clarification  
178           or [the] taking [of] additional evidence[, if deemed appropriate].

179   **59-H-6.6. Withdrawal of application.**

180   The [district council] District Council may allow an applicant to withdraw [his] an  
181           application for a local map amendment [at any time; provided, that if the request  
182           for withdrawal is made] after [publication of] the notice of hearing is published,  
183           [no application for the reclassification of all or any part of the land which is the  
184           subject of the application shall be allowed within the time limitations set forth in  
185           subsection 59-H-2.23 following the date of the resolution of the district council

186 approving such withdrawal, unless, by the resolution allowing withdrawal or  
187 subsequent resolution, the council specifies that the time limitation shall not  
188 apply.] and may specify that the time limits under subsection 59-H-2.23 for a  
189 future application do not apply if a decision on the merits of the application was  
190 not made.

191 \* \* \*

192 **Sec. 6. DIVISION 59-H-9 is amended as follows:**

193 \* \* \*

194 **59-H-9.3. Public hearing.**

195 **59-H-9.31. Hearing required.**

196 The [district council shall] District Council must hold a public hearing on each  
197 [application in accordance with the requirements of] text amendment introduced  
198 under this Section.

199 **59-H-9.32. Notice of hearing.**

200 (a) Within 30 days [of introduction of] after a text amendment is introduced, the  
201 [council] Council must[, by resolution,] set a date and time for public  
202 hearing on [the proposed text amendment,] it unless the Council extends the  
203 time [is extended] for a hearing or votes to postpone the amendment [is  
204 postponed] indefinitely. The [district council] District Council or its  
205 [authorized] designee must notify the [county executive] County Executive  
206 of this hearing date within 5 days after the date is [determined] set. The  
207 [council] Council or its designee must also give public notice [as follows:]

208 [(a) Advertisement] by placing an advertisement in at least one newspaper of  
209 general circulation in the [county not less than] County at least 30 days [nor]  
210 but not more than 45 [prior to] days before the hearing [date].

211 (b) [Contents of the] Each advertisement must include:

212 (1) [Date] the date, time, and place of the hearing;

- 213 (2) [Brief] a brief summary of the proposed amendment;
- 214 (3) [Brief] a brief summary of any further amendment to the proposed  
215 amendment [to the proposed amendment] submitted by a [council]  
216 Council member;
- 217 (4) [Notice of] where and how the complete text of the amendment may  
218 be obtained; and
- 219 (5) [Notice of] a telephone number or electronic mail address to [call for]  
220 request information or to register to speak at the hearing.

221 \* \* \*

222 **59-H-9.34. Conduct of hearing.**

223 (a) At the date, time, and place set for the public hearing, the [council shall]  
224 Council must conduct the hearing or announce a continuance to a date  
225 certain.

226 [(a)](b) Any interested person [shall have] has the right to submit oral or  
227 written testimony or documentary evidence into the record at the hearing,  
228 subject to any limits on the number of speakers or time allowed for oral  
229 testimony under the Council's rules of procedure.

230 [(b)](c) [There shall be] The Council Clerk must maintain a complete  
231 [stenographic report] record of the testimony at the hearing, [and a  
232 typewritten transcript thereof with] including all exhibits admitted at the  
233 hearing, [shall be incorporated into, and considered a] as part of[,] the record  
234 on the proposed amendment.

235 [(c)](d) At the close of the public hearing, the [council] Council may continue  
236 the hearing to a date certain, [; may] hold the record open for additional  
237 written testimony, [;] or [may] close the record.

238 [(d)](e) In addition, the [council] Council may request the [planning board]  
239 Planning Board to submit a final recommendation [within a stated period of]  
240 by a specified time, including a revised text of the amendment, if necessary.

241 **59-H-9.4. Action by [council] Council.**

242 **[59-H-9.41. Action by council.]**

243 [The action of the district council amending] The District Council may amend the  
244 text of this [chapter must be taken] Chapter in open session under the following  
245 procedures:

- 246 (a) A quorum of the [council] Council is not required to conduct a hearing on a  
247 [proposed] text amendment[; however], but any Council member who was  
248 not present at the hearing must [read and sign the transcript] review the  
249 record of the public hearing and sign a statement that the member reviewed  
250 the record before voting on the amendment[;].
- 251 (b) The vote on final adoption of a text amendment must be [on] a roll call [by  
252 yeas and nays;] vote.
- 253 (c) To be adopted, a text amendment must receive the affirmative vote of 5  
254 Council members [of the district council; and].
- 255 (d) (1) The Council may reject a text amendment by the affirmative vote of 5  
256 members.
- 257 (2) If [the] a text amendment does not receive 5 affirmative votes for  
258 adoption, the amendment is [denied] rejected. A resolution [of denial]  
259 to reject the amendment is not required, but the Council minutes  
260 should reflect that the amendment was [denied] rejected for lack of  
261 the necessary affirmative votes.

262 **59-H-9.6. Effective date.**

263 [Text amendments become effective] Each text amendment takes effect 20 days  
264 after the [date of council adoption] Council adopts it, unless [otherwise stated in]  
265 the ordinance adopting it specifies a different date.

266

267 **Sec. 7. Effective date.** This ordinance takes effect 20 days after Council  
268 adoption.

269

270 This is a correct copy of Council action.

271

272

273 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council