



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item #6**  
**7/25/02**

**DATE:** July 19, 2002  
**TO:** Montgomery County Planning Board  
**VIA:** Michael Ma, Zoning Supervisor *Ma*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To clarify the process for amending a special exception petition prior to public hearing.

**TEXT AMENDMENT:** No. 02-17  
**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:** June 25, 2002

**PLANNING BOARD REVIEW:** July 25, 2002  
**PUBLIC HEARING:** July 30, 2002

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**STAFF RECOMMENDATION:** APPROVAL with modifications

#### **PURPOSE OF THE TEXT AMENDMENT**

To clarify the process for amending a special exception petition prior to public hearing.

#### **BACKGROUND**

The Hearing Examiner is recommending that the process be clarified for amending a special exception petition before a public hearing is held. The existing language in Section 59-A-4.24 is confusing and needs improvement

#### **ANALYSIS**

##### **Existing Text**

The existing text in Section 59-A-4.24 is as follows:

**59-A-4.24. Amendment of petition.**

*An applicant may amend either petition before the hearing if the Board approves a motion to amend after giving 10 days' notice to all parties entitled to original notice of filing. If an amendment would alter materially an applicant's proposal or evidence, the Board may postpone the hearing to a date that permits all interested parties adequate time to review the amendment. Each proposed amendment must also be referred to the Planning Board under subsection 59-A-4.48(c). Nothing in this section prohibits the Board, during the hearing or at any time before the record is closed, from requesting the applicant to revise any aspect of the proposal.*

It should be noted that the existing language depicted in the attached text amendment was rendered outdated with the approval and adoption of Phase I of the Comprehensive Zoning Ordinance Review (ZTA 01-10). The aforementioned language depicts the most recent version of Section 59-A-4.24.

**Proposed Text Amendment**

The proposed text amendment replaces the existing language as follows:

*A non-material amendment to a petition for a special exception or variance may be made until ten days prior to the public hearing. The Board or Hearing Examiner must issue notice of a non-material amendment to all parties entitled to original notice of filing.*

*A material amendment to a petition for a variance or a special exception is one which substantially changes the nature, character or intensity of the proposed use, or its effect on traffic or on the immediate neighborhood.*

*Any material amendment to a petition for a special exception or variance may be made by motion to the Board or Hearing Examiner until ten days before the public hearing. The Board or Hearing Examiner may approve a motion to amend after 10 days notice to all parties entitled to the original notice of filing. The Board or Hearing Examiner may to postpone the hearing to permit all interested parties time to review a material amendment.*

*An applicant must transmit any material or non-material amendment proposal or evidence to the Planning Board pursuant to the requirements of 59-A-4.48(c).*

*The Board of Appeals or the Hearing Examiner, during the hearing or at any time before the record is closed, may approve a proposed amendment to a petition or request an applicant to revise any aspect of a proposal, with proper notice to the public.*

The proposed process is substantially the same as the existing amendment process, except that a “material amendment” to a petition is clearly defined as one that substantially changes the nature, character or intensity of the proposal. The ten-day notice remains the same for both material and non-material amendments to a petition. The Hearing Examiner or Board of Appeals would continue to have discretion in postponing a hearing to allow all interested parties time to review a material amendment. Pursuant to the requirements of Section 59-A-4.48(c), a material amendment must be sent to the Planning Board for recommendation with the record remaining open from the Hearing Examiner or Board of Appeals public hearings.

Staff has no objection with the proposed text amendment and believes that its adoption would clarify the intent for amending a special exception petition prior to public hearing.

## **RECOMMENDATION**

The staff supports the proposed text amendment to clarify the process for amending a special exception petition prior to public hearing. Staff has included one plain language clarification in line 31, deleting the word “to” between the words “may” and “postpone”.

Attachment 1 depicts the proposed text amendment as modified by staff. 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 (staff’s changes). [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment (staff’s changes).

GR

### **Attachments**

1. Proposed Text Amendment 02-17

Zoning Text Amendment No: 02-17  
Concerning: Special Exception Petition  
Draft No. & Date: 1 – 6/25/02  
Introduced: June 25, 2002  
Public Hearing: July 30, 2002; 1:30 PM  
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: District Council at request of Hearing Examiner

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

- clarifying process for amending a special exception petition before public hearing.

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-4.2    “Petitions for special exceptions and variances”  
Section 59-A-4.24   “Amendment of petition”

*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   **DIVISION 59-A-4.       COUNTY BOARD OF APPEALS.**

3   \* \* \*

4   **59-A-4.2.   Petitions for special exceptions and variances.**

5   \* \* \*

6           **59-A-4.24. Amendment of petition.**

7           [An applicant may amend this statement prior to the hearing, upon consent  
8           of the board, following a motion to amend and 10 days' notice thereof to all  
9           parties entitled to original notice of filing. Amendments that are found by  
10          the board to alter materially a petitioner's proposal or evidence are cause to  
11          postpone the hearing to a date that permits all interested parties, including  
12          but not limited to public agencies, adequate time to review the amendments.  
13          The amendment must also be referred to the planning board, in accordance  
14          with subsection 59-A-4.48(c). Nothing in this section prohibits the board,  
15          during the hearing or at any time before the record is closed, from requesting  
16          the applicant to revise any aspect of the proposal.]

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18          A non-material amendment to a petition for a special exception or variance  
19          may be made until ten days prior to the public hearing. The Board or  
20          Hearing Examiner must issue notice of a non-material amendment to all  
21          parties entitled to original notice of filing.

22  
23          A material amendment to a petition for a variance or a special exception is  
24          one which substantially changes the nature, character or intensity of the  
25          proposed use, or its effect on traffic or on the immediate neighborhood.

27 Any material amendment to a petition for a special exception or variance  
28 may be made by motion to the Board or Hearing Examiner until ten days  
29 before the public hearing. The Board or Hearing Examiner may approve a  
30 motion to amend after 10 days notice to all parties entitled to the original  
31 notice of filing. The Board or Hearing Examiner may [[to]] postpone the  
32 hearing to permit all interested parties time to review a material amendment.

33  
34 An applicant must transmit any material or non-material amendment  
35 proposal or evidence to the Planning Board pursuant to the requirements of  
36 59-A-4.48(c).

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38 The Board of Appeals or the Hearing Examiner, during the hearing or at any  
39 time before the record is closed, may approve a proposed amendment to a  
40 petition or request an applicant to revise any aspect of a proposal, with  
41 proper notice to the public.

42 \* \* \*

43 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
44 date of Council adoption.

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46 This is a correct copy of Council action.

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51 Mary A. Edgar, CMC  
52 Clerk of the Council