PHED Item 3
September 21, 2009
Worksession 2

MEMORANDUM

TO: Planning, Housing and Economic Development Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession 2:** Bill 22-09, Enforcement of County Laws – Notice of Violation - Appeals

Bill 22-09, Enforcement of County Laws – Notice of Violation - Appeals, sponsored by the Council President at the request of the County Executive, was introduced on May 5, 2009. A public hearing on this Bill and related code enforcement proposals was held on June 9, and a Planning, Housing and Economic Development Committee worksession was held on July 13.

Summary Bill 22-09 would make a number of mainly technical changes in the process to enforce County laws. Specifically, it would:

- authorize a code enforcement agency to issue a notice of violation (NOV) – in effect, a warning notice – which cannot be appealed to the Board of Appeals (see ©3-4, lines 4-30). The next step after an NOV is issued normally would be a civil or (less likely) criminal citation, enforceable in the District Court;
- repeal the right to appeal certain administrative actions, other than the issuance or denial of a license or permit, to the Board of Appeals, and clarify that certain other appeals can be taken (see ©4, lines 31-33 and following table; ©7-8, lines 111-119; ©8-9, lines 134-156; ©15-17, lines 174-234; ©17-19);
- confirm that decisions of the Circuit Court in cases appealed from the Board of Appeals can be appealed to the Court of Special Appeals (see ©5-6, lines 35-78); and
- repeal obsolete fire safety code regulatory references (see ©9-15, lines 157-173 and included table).

Issues

1) Should a notice of violation (NOV) be appealable to the Board of Appeals?

This Bill would specify that a notice of violation (NOV) issued by a code enforcement agency – in effect, a warning notice – cannot be appealed to the Board of Appeals (see ©3-4, lines 4-30). The next step after an NOV is issued normally would be a civil or (less likely) criminal citation, enforceable in the local District Court. Alternatively, the County could seek injunctive or declaratory relief in the Circuit Court.

The purpose of this amendment is to skip a step in the code enforcement process which Executive staff would say is non-essential: an appeal to the Board of Appeals (and possible further appeal to the Circuit Court and up the appellate ladder) when the issuance of a citation is the inevitable follow-up step which is more likely to gain compliance with applicable codes.[1]

Veteran land use lawyer (and former County Hearing Examiner) Stan Abrams criticized this and other parts of Bill 22-09 that would reduce the Board of Appeals jurisdiction (see his letter, ©29-30). His major point was that the Board is a better venue for these types of cases because it's more informal and has greater expertise in them. He also argues that proceedings before the Board are remedial but Court proceedings are more punitive. Civic activist Carol Placek emphasized similar arguments (see testimony, ©49-51) and pointed out (as did Board of Appeals chair Titus) that the published report of the Executive's Code Enforcement Work Group did *not* recommend limiting any appeal rights.

The Board of Appeals asserted that these cases might not be suitable for District Court review (see Board letter, ©31-33) and the Board could give them more expertise and attention. According to data compiled by the Board's staff (see memo from Katherine Freeman, ©34-35), the Board hears relatively few administrative appeals involving NOV's. Ms. Freeman also noted that "Eliminating these appeals from BOA jurisdiction would not seem to have a large impact on the Board's workload. And, parties will have recourse in these cases through the courts." Board chair Titus recommended that the Committee review these issues in more depth, noting that the Executive Work Group did not seek or receive public input.

The County Civic Federation supports making a NOV unappealable but noted that the Board of Appeals is a citizen body which "guarantees an affordable avenue of redress for actions considered unwise or unlawful" without the expense of hiring a lawyer. Proponents of this Bill (see, e.g. Greater Colesville Citizens Association testimony on ©39-40) argue that the Board of Appeals process (including later court appeals) is susceptible to long delays in what was intended to be only a preliminary pause in the code enforcement process.

Viewed most broadly, **the underlying question is whether the Board of Appeals or the District or Circuit Court is the best forum to hear and decide code enforcement cases**. Executive staff prefer the District Court because, aside from its relative speed, in reviewing citations its decisions have real force, whereas, even if the Board upholds a NOV, the recipient can effectively ignore it and force the County to take the next step and issue a citation (although in practice many cases are resolved earlier). The County Attorney's Office pointed out at the first worksession that, under current practice, 3 District Court judges are designated to hear civil citations and 2 of them have extensive experience in County government; however, this may not necessarily be true in the future.

A **different approach**, used in some other contexts, might be to **amend County law to allow enforcing agencies to issue binding orders, appealable on the record (not *de***

[1]For a list, compiled by the County Attorney, of County Code provisions which require or authorize NOV's, see ©24-28.

***novo*) to the Board and ultimately the Circuit Court, the violation of which carry their own sanctions**. Whether any state laws must be amended to allow this approach warrants further research. In the meantime, this Bill assumes the current enforcement paradigm.

The Civic Federation (see testimony, ©38) urged that "residents, especially adjacent neighbors of a home construction site, should retain the right to challenge, in the Board of Appeals, a decision by DPS not to issue a Notice of Violation." Bill 22-09 expressly excludes an appeal of a decision *not* to issue an NOV (see ©3, lines 25-27 – "issue or decline to issue").[2] Under current law, if a neighbor believes that a building is not being built according to the permit, the clear-cut remedy is to seek injunctive or declaratory relief in Circuit Court. It's less clear (as attorney Norman Knopf contends; see testimony, ©46-48) that DPS' refusal to issue a NOV (or a stop-work order) would be an appealable "decision" under current §8-23.

Council staff recommendation: treat an NOV as simply a warning notice, as this Bill does, and do not allow anyone to appeal the issuance or non-issuance of an NOV.

2) Should an enforcing agency be able to issue a citation before the time to comply with an NOV has expired?

A related issue is whether the enforcing agency -- most often the Department of Permitting Services (DPS) or Department of Housing and Community Affairs (DHCA) -- should have to wait before issuing a citation until the time for the recipient to comply with an NOV, normally 30 days, has passed. Bill 22-09 would allow the enforcing agency to issue a citation at any time (see ©3, lines 20-23). The Civic Federation expressed concern (see testimony, ©38) that eliminating this "waiting period" would not allow a recipient enough time to comply before a fine is imposed.

In Council staff's view, an enforcing agency is unlikely to "jump the gun" in this way, and in any case a District Court judge is unlikely to impose a fine if the defendant has complied within the time allowed in the NOV. Nonetheless, giving someone a certain time to comply with an NOV, and then issuing a citation before that time expires, appears arbitrary and will not increase civic respect for County government.

Council staff recommendation: do not allow a citation to be issued before the time to comply with an NOV expires, except in an emergency (life- or health-threatening) situation.

3) Which building permit actions should be appealable?

Bill 22-09 would limit appeals of DPS' building permit actions to appeals of the issuance, denial, renewal, or revocation of a permit (see ©7-8, lines 112-117) and would exclude appeals, allowed under current law, of "any other decision or order of the Department".

---

[2]This issue is closely related to Issue 3, discussed below, whether DPS' decision to issue or lift a stop-work order should be appealable.

The Civic Federation and several individual speakers at the public hearing, including attorney Knopf and civic activist Carol Placek, objected strongly to this narrowing of citizens' appeal rights, and particularly to the potential inability to appeal the issuance or lifting of a DPS stop-work order. Ms. Placek was a party in the case of *Montgomery County v. Longo*, in which the Court of Special Appeals on July 7 interpreted County Code §8-23 to allow an appeal of the lifting of a stop-work order, at least when the order involved alleged modifications to an existing building permit.[3]

The current law does not mention an appeal from an amendment or modification of a building permit, but we think such an appeal would be allowed because a permit amendment is another DPS "decision or order". The *Longo* opinion strongly implied (but did not hold) that current §8-23 would allow an appeal of an amendment to a building permit. Several commenters pointed out that an amendment to a permit can significantly change the nature or scope of a building and could easily raise new issues of compliance with County law.

In Council staff's view, the Bill goes too far in restricting appeals in this area. We would draw a distinction between later appeals that challenge the validity of the underlying permit, the issuance of which already could have been appealed within 30 days, and those appeals which involve actions taken after the permit is issued – i.e. modifications to the permit, or questions of compliance with the terms of the permit. In our view, these situations present new issues on which an appeal should be allowed.

Council staff is aware that one effect of making stop-work orders, and more particularly lifting those orders, appealable, might be that DPS will issue fewer stop-work orders, and instead rely more on informal, below-the-surface negotiations with permit-holders to resolve discrepancies. While this result is possible, we prefer to believe that DPS will continue to operate in a way that is transparent to all parties.

Council staff recommendation: amend Bill 22-09 to allow appeals of amendments to building permits, and of the issuance or revocation of a stop-work order, as long as those appeals do not challenge the validity of the underlying permit. But do not allow an appeal when DPS declines to issue a stop-work order; in those cases, an aggrieved party who believes the permit is not being followed or enforced would seek an injunction in court. An appeal should not be allowed if a permit amendment only corrects a typographical error or is otherwise purely ministerial (e.g. changes the applicant's name). This can be done by amending ©7-8, lines 112-117, as follows:

(a) Any person aggrieved by the issuance, denial, renewal, amendment, suspension, or revocation of a permit, **[**or any other decision or order of the Department**]** or the issuance or revocation of a stop-work order, under this Chapter may appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, amended, suspended, or revoked**[**, or the order or decision is issued**]** or the stop-work order is issued or revoked. A person may not appeal any other order of the Department, **[[**including a decision to issue or rescind a stop work order**]]** and may not appeal an

[3]See case summary on ©52. Council staff have copies of the CSA opinion available.

amendment of a permit if the amendment corrects a typographic or calculation error or is otherwise solely ministerial. A person must not contest the validity of the original permit in an appeal of an amendment or a stop-work order.

In a related issue, attorney Knopf argued (see testimony, ©46-48) that the Bill's amendment to §8-22 which would delete, among other overlong text, the phrase on ©6, lines 83-84, "or any other applicable federal, state or local law or regulation", would unduly restrict DPS' authority to apply other laws which it currently enforces. This argument may have merit. To avoid unintentionally narrowing DPS' regulatory authority, **Council staff recommends** inserting, after Chapter on ©7, line 106: or another applicable federal, state, or County law regulating an aspect of building construction which the Department enforces.

4) Which other administrative actions should be appealable?

Besides the building permit appeals discussed in Issue 3, this Bill would repeal the right of an aggrieved party to appeal certain other County administrative decisions which involve:

- fire safety orders (©4; ©9, lines 147-149; ©17-18, lines 235-250);
- fire detection systems and devices (©18, lines 254-257);
- water and sewage systems (©4);
- removing obstructions on highways (©4; ©19, lines 276-288);
- weed removal (©4; ©19, lines 290-301); and
- trash collection and disposal orders (©18, lines 265-267).

In each case, the County Attorney's office argues, the County will have to issue a citation to the affected party to compel compliance, and the affected party can then contest the citation in court. However, some of these provisions involve issuing or denying licenses, permits, or other approvals, without which a party cannot take a particular action. In that case, the party would assume the risk of being cited for operating without a required license etc., which could be a serious offense on its own. The Committee may want to hear from Executive staff why each of these appeal rights should be terminated. **Council staff recommendation:** repeal the right to appeal a NOV in each of the listed subject areas, as the Bill does, but not any action involving a license or permit.

This packet contains:	Circle #
Bill 22-09	1
Legislative Request Report	21
Memo from County Executive	22
Fiscal impact statement	23
List of County Code provisions with notices of violations	24
Letter from attorney Stanley Abrams	29
Letter from Catherine Titus, Chair, Board of Appeals	31
Memo from Katherine Freeman, Board of Appeals staff	34
Selected public hearing testimony	36
Summary of *Longo* case	52
Memo from Allison Fultz	53

F:\LAW\BILLS\0922 Enforcement - Appeals\PHED Memo 9-14-09.Doc

Bill No. 22-09
Concerning: Enforcement of County Laws - Notice of Violation - Appeals
Revised: 4-28-09 Draft No. 4
Introduced: May 5, 2009
Expires: November 5, 2010
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) authorize an enforcement agency to issue a notice of violation to enforce certain County laws;
(2) limit the jurisdiction of the Board of Appeals regarding certain enforcement actions taken by certain enforcement agencies;
(3) clarify when certain appeals may be taken and remove the right to appeal certain orders and decisions;
(4) make technical corrections and repeal obsolete provisions of law; and
(5) generally amend County law regarding enforcement.

By amending
Montgomery County Code
Chapter 1. General Provisions
Section 1-18
Chapter 2. Administration
Sections 2-112 and 2-114
Chapter 2A, Administrative Procedures Act
Section 2A-11
Chapter 8. Buildings
Sections 8-22 and 8-23
Chapter 19. Erosion, Sediment Control and Storm Water Management
Sections 19-9 and 19-12
Chapter 22. Fire Safety Code
Sections 22-3, 22-14, 22-18, and 22-27
Chapter 48. Solid Waste
Sections 48-26, 48-27, and 48-28
Chapter 49. Streets and Roads
Section 49-9

By repealing

Montgomery County Code
Chapter 22. Fire Safety Code
Section 22-21
Chapter 58. Weeds
Section 58-6

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*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:

Sec. 1. Sections 1-18, 2-112, 2-114, 2A-11, 8-22, 8-23, 19-9, 19-12, 22-3, 22-14, 22-18, 22-27, 48-26, 48-27, 48-28, 49-9, are amended and Sections 22-21 and 58-6 are repealed as follows:

1-18. Enforcement procedures.

* * *

(f) *Notice of Violation.*

(1) An enforcement officer may issue a notice of violation before issuing a citation.

(2) A notice of violation must:

(A) be in writing;

(B) describe in general terms a remedial action which, if taken, will achieve compliance with County law;

(C) specify a reasonable time to perform any required remedial action; and

(D) inform the recipient that noncompliance with the required remedial action is likely to result in the issuance of a civil or criminal citation under subsection (b)(1) which the enforcement agency can enforce in a court with jurisdiction.

(3) This subsection does not prevent an enforcement officer from:

(A) issuing a citation at any time, including after an enforcement officer has issued a notice of violation under which time remains for remedial action to be taken; or

(B) pursuing any remedy under Section 1-20.

(4) A person may not appeal to the Board of Appeals a decision by an enforcement officer to issue or decline to issue a notice of violation under this subsection.

28 (5) This subsection does not apply if another County law expressly
29 allows an enforcement officer to issue a notice of violation or
30 warning before a citation is issued.

31 **2-112. Jurisdiction.**

32 * * *

33 (c) The Board has the following appellate jurisdiction.

The [board] Board must hear and decide each appeal taken under:	**Those appeals involve:**
* * *	
[Section 22-21	Fire safety orders]
	* * *
[Chapter 27A	Individual water supply and sewage disposal systems]
* * *	
Section 48-28	[Removal of solid waste and weeds] Permits and licensing
[Section 49-16	Removal of obstructions to vision along highways]
Section 49-35	Permits for grading and construction
Section 49-36	Permit conditions and procedures
[Section 49-39A	Grading and construction of roads, sidewalks, and curbs]
	* * *
[Section 58-6	Weed removal]
Chapter 59	Special exceptions decided by Hearing Examiner

34 * * *

35 **2-114. Appeals from decisions.**

36 [Any decision by the county board of appeals may, within thirty (30) days
37 after the decision is rendered, be appealed by any person aggrieved by the decision of
38 the board and a party to the proceeding before it, to the circuit court for the county
39 which shall have power to affirm the decision of the board, or if such decision is not
40 in accordance with law, to modify or reverse such decision, with or without
41 remanding the case for rehearing as justice may require. Whenever any such appeal
42 is taken a copy thereof shall be served on the board by the clerk of the court and the
43 board shall promptly give notice of the appeal to all parties to the proceeding before
44 it and shall, within the time limit prescribed by the Maryland Rules of Procedure, file
45 with the court the originals or certified copies of all papers and evidence presented to
46 the board in the proceeding before it, together with a copy of its opinion which shall
47 include a statement of the facts found and the grounds for its decision. Any party to
48 the proceeding in the circuit court aggrieved by the decision of the court may appeal
49 from such decision to the court of appeals within thirty (30) days from the date
50 thereof. The review proceedings provided by this section shall be exclusive.]

51 (a) If a party in a matter adjudicated by the Board of Appeals is aggrieved
52 by a final decision of the Board in the matter, the party may seek
53 judicial review of the decision in the Circuit Court under the applicable
54 Maryland Rules of Procedure governing judicial review of
55 administrative agency decisions. A party aggrieved by the decision of
56 the Circuit Court may appeal that decision to the Court of Special
57 Appeals.

58 (b) Unless the court reviewing the Board's decision orders a stay, the
59 decision remains in effect pending a final decision of the court.

60 **2A-11. Judicial review.**

61 [Any party aggrieved by a final decision in a case governed by this article,
62 whether such decision is affirmative or negative in form, may appeal said decision
63 to the circuit court for Montgomery County, Maryland, in accord with the
64 provisions of the Maryland Rules of Procedure governing administrative appeals.
65 Said court shall have the power to affirm, reverse or modify the decision or remand
66 the case for further proceedings as justice may require. The filing of such appeal
67 shall not stay the order of the hearing authority. Any party to the proceeding in the
68 circuit court may appeal from such decision to the appellate courts of Maryland
69 pursuant to applicable provisions of the Maryland Rules of Procedure.]

70 (a) A party aggrieved by a final decision in a case governed by this
71 Article may seek judicial review of the decision in the Circuit Court
72 under the applicable Maryland Rules of Procedure governing judicial
73 review of administrative agency decisions. A party aggrieved by the
74 decision of the Circuit Court may appeal that decision to the Court of
75 Special Appeals.

76 (b) Unless the court reviewing the decision of the hearing authority orders
77 a stay, the hearing authority's decision remains in effect pending a
78 final decision of the court.

79 **8-22. Violations.**

80 [(a) *Notice of violation.* The director shall serve a notice or order on the
81 person responsible for the erection, construction, alteration, extension,
82 repair, use or occupancy of a building or structure in violation of the
83 provisions of this chapter or any other applicable federal, state or local
84 law or regulation or in violation of a detail statement or a plan
85 approved thereunder or in violation of a permit or certificate issued
86 under the provisions of this chapter; and such order shall direct the

87 discontinuance of the illegal action or condition and the abatement of
88 the violation.]

89 [(b) *Prosecution of violation.* If the violation cited in the notice or order is
90 not abated within the period set forth in said notice or order, the
91 director may institute the appropriate proceeding at law or in equity to
92 restrain, correct or abate such violation or to require the removal or
93 termination of the unlawful use of the building or structure in
94 violation of the provisions of this chapter or of the order or direction
95 made pursuant thereto.]

96 [(c) *Violation penalties.* Any person who violates a provision of this
97 chapter or fails to comply with any of the requirements thereof or who
98 erects, constructs, alters or repairs a building or structure in violation
99 of an approved plan or who refuses, ignores or violates an order of the
100 director or a condition of permit or certificate issued under the
101 provisions of this chapter shall be subject to punishment for a class A
102 violation as set forth in section 1-19 of chapter 1 of the County Code.
103 Each day a violation continues to exist shall constitute a separate
104 offense.]

105 A person has committed a class A violation if the person violates any
106 provision of this Chapter, including:

107 (a) building, altering, or repairing a building or structure in violation of an
108 approved plan; or

109 (b) violating an order of the Director or any condition of an approved plan,
110 permit, or certificate issued under this Chapter.

111 **8-23 [Board of appeals] Appeals.**

112 (a) Any person aggrieved by the issuance, denial, renewal, or revocation of
113 a permit [or any other decision or order of the Department] under this

114 Chapter may appeal to the County Board of Appeals within 30 days
115 after the permit is issued, denied, renewed, or revoked[, or the order or
116 decision is issued]. A person may not appeal any other order of the
117 Department, including a decision to issue or rescind a stop work order.
118 (b) After notice and hearing, the Board may affirm, remand, modify, or
119 reverse the [order or decision] action of the Department.
120 (c) Any party may appeal a decision of the Board to the Circuit Court under
121 Section 2-114.
122 **19-9. Permit revocation or suspension; stop work order.**
123 * * *
124 (f) This Section [must not be interpreted as restricting] does not restrict the
125 Department from proceeding directly with any available alternative
126 enforcement procedures under [section 19-19 of this chapter] Section
127 19-69.
128 * * *
129 **19-12. Inspections.**
130 * * *
131 (h) This Section does not restrict the Department from proceeding directly
132 with any available alternative enforcement procedure under Section 19-
133 69.
134 **22-3. Construction and scope of Chapter.**
135 * * *
136 (e) [Nothing in this chapter shall be construed as rendering] This Chapter
137 does not render any other applicable [laws] law or regulation invalid.
138 [In any situation where] If a conflict [exists] arises between [a
139 provision of] this [chapter] Chapter and another [code] law or
140 regulation, the fire marshal and [appropriate] the head of the agency

141 responsible for enforcing the conflicting [code shall determine in
142 concert] law or regulation must agree which [provisions shall apply]
143 applies. [Conflicts which are unreconcilable shall] If they cannot agree,
144 any remaining conflict must be referred to the [director of the
145 department of fire and rescue services] Fire Chief. The decision of the
146 [director of fire and rescue services] Fire Chief in any matter relating to
147 fire safety [shall be] is final[, except that any person aggrieved by such
148 decision shall have the right to appeal to the county board of appeals in
149 accordance with chapter 2 of the County Code]. Within [thirty (30)] 30
150 days [following the discovery of] after any [serious] remaining conflict
151 has been resolved, the [director] Fire Chief and the head of the agency
152 responsible for enforcing the conflicting [code shall] law or regulation
153 must forward to the [county executive] County Executive a joint
154 [recommendations for the removal of] proposal to amend a law or
155 regulation to eliminate the conflict [from the County Code or the
156 regulations adopted pursuant thereto].

157 **22-14. [Standards adopted] National standards.**

158 [The following codes, standards and model laws, published by the National
159 Fire Protection Association, International, 470 Atlantic Avenue, Boston,
160 Massachusetts 02210, in Volumes 1-10 and Volume 16 of the sixteen-volume set
161 of National Fire Codes, are adopted in their entirety in these regulations except as
162 herein set forth. The text of these adopted codes, standards and model laws shall
163 be fully enforceable as other regulations adopted under the provisions of this
164 chapter as if the same were incorporated and set forth at length therein. The dates
165 or additions of the individual codes and standards shall be as listed in the National
166 Fire Codes of the National Fire Protection Association, more specifically, the 1978
167 edition thereof. The codes, standards and model laws adopted pursuant to these

168 regulations shall not waive any provision of this chapter nor be less restrictive than
169 its provisions.

NFPA No.	*Code Standards*
32	Standard for Drycleaning Plants
88A	Standard for Parking Structures
88B	Standard for Repair Garages
101	Code for Life Safety from Fire in Building and Structures
102	Standard for Tents, Grandstands and Air-Supported Structures Used for Places of Assembly
501A	Standards for Installation of Mobile Homes
1122L	Code for Unmanned Rockets
NFPA No.	*Engineering Practice Standards Flammable and Combustible Liquids*
30	Flammable and Combustible Liquids Code
321	Standard on Basic Classification of Flammable and Combustible Liquids
327	Standard Procedures for Cleaning and Safeguarding Small Tanks and Containers
385	Recommended Regulatory Standards for Tank Vehicles for Flammable and Combustible Liquids
386	Standard for Portable Shipping Tanks
NFPA No.	*Flammable Gasses*
50	Standard for Bulk Oxygen Systems at Consumer Sites
50A	Standard for Gaseous Hydrogen Systems at Consumer Sites
50B	Standard for Liquefied Hydrogen Systems at Consumer Sites

56A	Standard for the Use of Inhalation Anesthetics (Flammable and Nonflammable)
56B	Standard for Inhalation Therapy
56D	Standard for Hyperbaric Facilities
56E	Standard for Hypobaric Facilities
56F	Standard for Nonflammable Medical Gas Systems
58	Standard for Storage and Handling of Liquefied Petroleum Gases
59	Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants
59A	Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG)
NFPA No.	*Hazardous Materials and Processes*
33	Standard for Spray Finishing Using Flammable and Combustible Materials
34	Standard for Dip Tanks Containing Flammable or Combustible Liquids
35	Standard for the Manufacture of Organic Coatings
NFPA No.	*Hazardous Materials and Processes*
40	Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film
40E	Code for the Storage of Pyroxylin Plastic
43A	Code for the Storage of Liquid and Solid Oxidizing Materials
43C	Code for the Storage of Gaseous Oxidizing Materials
43D	Code for the Storage of Pesticides in Portable Containers
51	Standard for the Installation and Operation of Oxygen Fuel Gas Systems for Welding and Cutting
51B	Standard for Fire Prevention in Use of Cutting and Welding Processes

56C	Safety Standard for Hospital Laboratories
57	Standard for Fumigation
490	Code for the Storage of Ammonium Nitrate
495	Code for the Manufacturing, Transportation, Storage and Use of Explosive Materials
654	Standard for the Prevention of Dust Explosions in the Plastics Industry
NFPA No.	*Transportation*
407	Standard for Aircraft Fuel Servicing
505	Standard for Type Designations, Areas of Use, Maintenance and Operation of Powered Industrial Trucks
NFPA No.	*Fire Extinguishing Systems*
11	Standard for Foam Extinguishing Systems
11A	Standard for High Expansion Foam Systems (Expansion Ratios from 100:1 to 1000:1)
11B	Standard on Synthetic Foam and Combined Agent Systems
12	Standard on Carbon Dioxide Extinguishing Systems
12A	Standard on Halongenated Fire Extinguishing Agent Systems – Halon 1301
NFPA No.	*Fire Extinguishing Systems*
12B	Standard on Halongenated Fire Extinguishing Agent Systems – Halon 1211
13	Standard for the Installation of Sprinkler Systems
14	Standard for the Installation of Standpipes and Hose Systems
15	Standard for Water Spray Fixed Systems for Fire Protection

16	Standard for the Installation of Foam-Water Sprinkler Systems and Foam-Water Spray Systems
17	Standard for Dry Chemical Extinguishing Systems
20	Standard for Installation of Centrifugal Fire Pumps
24	Standard for Outside Protection
75	Standard for the Protection of Electronic Commuter/Data Processing Equipment
NFPA No.	*Portable Fire Extinguishers*
10	Standard for the Installation of Portable Fire Extinguishers
NFPA No.	*Fire Warning Systems*
71	Standard for the Installation, Maintenance and Use of Central Station Protective Signaling Systems for Guard, Fire Alarm and Supervisory Service
72A	Standard on Installation, Maintenance and Use of Local Protective Signaling Systems for Watchmen, Fire Alarm and Supervisory Service
72B	Standard for the Installation, Maintenance and Use of Auxiliary Protective Signaling Systems for Fire Alarm Service
72C	Standard for the Installation, Maintenance and Use of Remote Station Protective Signaling Systems
NFPA No.	*Fire Warning Systems*
72D	Standard for the Installation, Maintenance and Use of Proprietary Protective Signaling Systems for Watchmen, Fire Alarm and Supervisory Service
72E	Standard for Automatic Fire Detectors
74	Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment

NFPA No.	*Storage*
81	Standard for Fur Storage, Fumigation and Cleaning
231	Standard for Indoor General Storage
231B	Standard for Storage of Cellular Rubber and Plastic Materials
231C	Standard for Rack Storage of Materials
232	Standard for the Protection of Records
NFPA No.	*Building Construction and Facilities*
31	Standard for Oil Burning Equipment
37	Standard for Stationary Combustion Engines and Gas Turbines
54	National Fuel Gas Code
80	Standard for Fire Doors and Windows
82	Standard for Rubbish Handling and Incinerators
86A	Standard for Ovens and Furnaces, Design, Location and Equipment
86B	Standard for Industrial Furnaces, Design, Location and Equipment
90A	Standard for the Installation of Air Conditioning and Ventilating Systems
91	Standard for the Installation of Blower and Exhaust Systems for Dust, Stock, Vapor Removal or Conveying
96	Standard for the Installation of Equipment for the Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment
NFPA No.	*Building Construction and Facilities*
211	Standard for Chimneys, Fireplaces and Vents
241	Standard for Safeguarding Building Construction and Demolition Operations
418	Standard on Roof-Top Heliport Construction Protection]

170 The Fire Chief must recommend that the Executive adopt by regulation under
171 Section 22-13 those parts of the National Fire Code as published by the National Fire
172 Protection Association, or a comparable code published by a similar organization,
173 that the Fire Chief finds will promote the purposes of this Chapter.

174 **22-18. Compliance.**

175 (a) *Generally.* [Any person who shall violate any of the provisions of this
176 chapter; or shall fail to comply therewith; or shall permit or maintain
177 such a violation; or shall violate or fail to comply with any order made
178 thereunder; or shall build in violation of any details, statements,
179 specifications or plans submitted or approved thereunder; or shall
180 operate not in accordance with the provisions of any certificate,
181 permit or approval issued thereunder; or who shall fail to comply with
182 such an order as affirmed or modified by the board of appeals within
183 the time fixed therein shall severally for each and every violation and
184 noncompliance respectively, be guilty of a misdemeanor. The
185 imposition of a penalty for any violation shall not excuse the violation
186 nor shall the violation be permitted to continue. Prosecution or lack
187 thereof of either the owner, occupant, or the person in charge shall not
188 be deemed to relieve any of the others.] A person has committed a
189 Class A violation if that person violates, permits a violation of, or
190 does not comply with:

191 (1) this Chapter;

192 (2) an order issued under this Chapter;

193 (3) any building specification or plan approved under this Chapter;
194 or

195 (4) any certificate, permit, or approval issued under this Chapter.

196 (b) *Orders or notices.* [Any order or notice issued or served as provided
197 in this code shall be complied with by the owner, operator, occupant
198 or other person responsible for the condition or violation to which the
199 order or notice pertains. Every order or notice shall set forth a time
200 limit for compliance dependent upon the hazard and danger created by
201 the violation. In cases of extreme danger to persons or property
202 immediate compliance shall be required. If the building or other
203 premises is owned by one person and occupied by another, under
204 lease or otherwise, and the order or notice requires additions or
205 changes in the building or premises such as would immediately
206 become real estate and be the property of the owner of the building or
207 premises, such order or notice shall be complied with by the owner
208 unless the owner and occupant have otherwise agreed between
209 themselves, in which event the occupant shall comply.]
210 (1) Any order or notice regarding a condition or violation which
211 must be corrected must:
212 (A) set a deadline for compliance that is based on the danger
213 created by the condition or violation;
214 (B) be complied with by the owner and any other person
215 responsible for the condition or violation; and
216 (C) require immediate compliance if the condition or
217 violation presents an extreme danger to any person or
218 property.
219 (2) If the property is occupied by a person other than the owner, the
220 owner is responsible for compliance with the order or notice
221 unless within 5 days after the order or notice is issued:

222 (A) the owner and occupant agree that the occupant will
223 comply with the order or notice; and
224 (B) the owner and occupant notify the Fire Chief of this
225 decision.
226 (c) *Unauthorized tag removal.* [It shall be a misdemeanor for any person
227 or user, firm or agent to continue the use of any device or appliance
228 which has been tagged under section 22-16(c), unless written
229 authority to remove such tag is given by the director. Removing or
230 mutilating the tag shall be deemed a misdemeanor.] A person has
231 committed a Class A violation if that person:
232 (1) continues using any device or appliance that was tagged under
233 Section 22-16; or
234 (2) removes the tag without written permission of the Fire Chief.
235 **22-21. [Appeals] Reserved.**
236 [(a) *From orders.* Any person aggrieved by an order issued under this
237 chapter may appeal within the abatement period but not to exceed ten
238 (10) days from such order to the county board of appeals pursuant to
239 sections 2-108 to 2-116 of the County Code. Such appeal shall not
240 stay execution of the order more than ten (10) days, unless the board
241 of appeals shall grant further stay upon application of the person filing
242 the appeal. No stay of execution shall be permitted for any order
243 issued pursuant to this chapter that requires immediate compliance,
244 unless a court of competent jurisdiction shall order such stay of
245 execution.
246 (b) *Decisions of department.* Any person aggrieved by the issuance,
247 denial, renewal or revocation of a permit, license, certificate or any
248 other decision of the department made hereunder may appeal to the

county board of appeals, which after hearing upon notice shall have authority to affirm, modify or reverse the order or decision made.]

22-27. [Permits and certificates of approval for] Approval of fire detection systems and devices.

* * *

[(f) *Appeals.* If a certificate of approval or permit required by this Section has been denied, the applicant may appeal to the County Board of Appeals under Section 22-21.]

Chapter 48. SOLID [WASTES] WASTE (TRASH).

48-26. [Same] Permits and licenses — Fees.

* * *

48-27. [Same] Permits and licenses — Refusal to renew; revocation or suspension.

* * *

48-28. [Appeals from orders and decisions under chapter] Permits and licenses — Appeals.

[The county board of appeals shall have full authority to hear testimony and decide all appeals taken from decisions or orders of the director under this chapter.] Any person aggrieved by the issuance, denial, renewal, suspension, or revocation of a permit or license [or any other decision or order of the director made] under this Chapter may appeal to the [county board of appeals] County Board of Appeals within [ten (10)] 10 days [from such order or decision] after the action is taken. [Upon notice, after hearing, the board shall have authority to] The Board may affirm, remand, modify, or reverse the [order or decision of the director] action of the Department. [Such] An appeal [shall] to the Board must not stay [execution of] the [order] action unless the [board] Board, upon application, [shall grant] grants a stay of [such order] the action.

276 **49-9. Removal of items that [obstruct the vision of motorists on public**
277 **highways or] interfere with the use of public rights-of-way.**
278 * * *
279 [(b) *Petition for hearings.* Any person aggrieved by any order issued under
280 this Section may, within 10 days after receiving the order, petition in
281 writing for a hearing before the Board of Appeals. Within 30 days
282 after receiving a petition, the Board must hold a hearing. The Board
283 may affirm, modify or rescind the order. The County must not
284 remove any obstruction or enforce any order issued under this Section
285 until either:
286 (1) the Board has affirmed the order; or
287 (2) the time to petition for a hearing has expired and no petition
288 was filed.] Reserved.
289 * * *
290 **58-6. [Appeals] Reserved.**
291 [(a) The County Board of Appeals may hear testimony and decide all
292 appeals of decisions or orders of the director under this chapter.]
293 [(b) Any person aggrieved by any decision or order of the director under
294 this chapter may appeal to the County Board of Appeals within 10
295 days after the order or decision is issued.]
296 [(c) After notice and hearing, the board may affirm, modify, or reverse the
297 order or decision of the director.]
298 [(d) An appeal does not stay execution of an order unless the board, on
299 application, grants a stay.]
300 [(e) Any party may appeal a decision of the board to the Circuit Court
301 under section 2-114.]
302 **Sec. 2. Transition.** This Act does not apply to any appeal to the Board

303 of Appeals that was filed before this Act took effect.

304 **Sec. 3. Regulations.** Regulations 6-06AM and 7-06AM remain in effect,
305 notwithstanding any amendment to the County Code in Section 1 of this Act, except
306 for any provision of the National Fire Code that authorizes or refers to an appeal to
307 the Board of Appeals.

308 *Approved:*

309

310

311 Philip M. Andrews, President, County Council Date

312 *Approved:*

313

314

315 Isiah Leggett, County Executive Date

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

317

318

319 Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT
Bill 22-09

Enforcement of County Laws – Notice of Violation - Appeals

DESCRIPTION: This Bill would amend County law to generally provide that an enforcing agency may, but is not required to, issue a notice of violation for a code violation. In addition, the Bill provides that if a certain notice of violation is issued, the notice of violation may not be appealed to the Board of Appeals. The Bill authorizes an enforcing agency to issue a citation at any time, even if a notice of violation has been issued and the time to correct the violation has not elapsed.

PROBLEM: Some code revisions require an enforcing agency to issue a notice of violation, giving the violator an opportunity to correct the violation before the enforcing agency may issue a citation. The Code also gives, in many instances, the violator a right to appeal the notice of violation to the Board of Appeals. As a result, significant time may elapse before the enforcing agency is in a position to issue a citation and bring the matter to court where the violator may be compelled to correct the violation. During the elapse of this time, members of the community must continue to endure a violation and the public's confidence in County Government is eroded.

GOALS AND OBJECTIVES: To provide enforcing agencies with a means to seek to correct code violations that erode the quality of life in the communities of Montgomery County.

COORDINATION: Department of Permitting Services, Department of Environmental Protection, Montgomery County Fire & Rescue Service, Department of Transportation, Office of the County Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: Subject to the general oversight of the County Executive and the County Council.

EXPERIENCE ELSEWHERE: Unknown.

SOURCE OF INFORMATION: Tom Street, Assistant Chief Administrative Officer
Marc P. Hansen, Deputy County Attorney

APPLICATION WITHIN MUNICIPALITIES: Varies.

PENALTIES: None.

BILL

MT
CC
SBF
LL
BD
AM
SF
CHS
KL
LAM

041490

Isiah Leggett
County Executive

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

April 2, 2009

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Proposed Legislation – Notice of Violation and Jurisdiction of Board of Appeals

I am attaching for the Council's consideration a bill which would authorize, but not require, an enforcing agency to issue a notice of violation for a code violation. The bill also provides that certain notices of violation may not be appealed to the Board of Appeals. I am also attaching a Legislative Request Report for the bill.

This bill is one of four legislative proposals that I am submitting to Council today to implement the recommendations included in the November 2008 final report of the Code Enforcement Work Group. Each of these proposals is intended to address code enforcement problems which erode the quality of life in the County.

Under current law, an enforcing agency is required to issue a notice of violation which gives a violator an opportunity to correct the violation before the enforcing agency may issue a citation. In many instances, current law also allows a violator to appeal a notice of violation to the Board of Appeals. As a result of these current provisions of the County Code, significant time may elapse before an enforcing agency is able to issue a citation and bring a code enforcement matter to court where the violator can be compelled to correct the violation. During that lapse of time, members of the community must continue to endure a violation and the public's confidence in County government is eroded. By reducing the amount of time between issuance of a notice of violation and issuance of a citation, this bill will help restore confidence on the County's code enforcement activities.

Thank you for your prompt consideration of this legislation. I look forward to working with the Council as it considers this proposal.

Attachments (2)

BILL

NAN
CC
SBF
LL
BD
MF
AK

041544

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 7, 2009

TO: Phil Andrews, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill – Issuance of Notice of Violation and Jurisdiction of Board of Appeals - Amendments

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The Bill would amend County law to generally provide that an enforcing agency may, but is not required to; issue a notice of violation for a code violation. In addition, the Bill provides that if a certain notice of violation is issued, the notice of violation may not be appealed to the Board of Appeals. The Bill authorizes an enforcing agency to issue a citation at any time, even if a notice of violation has been issued and the time to correct the violation has not elapsed.

FISCAL SUMMARY

The Office of the County Attorney states that the proposed amendment, as drafted, will shift and reduce the attorney resources presently required to defend the County's actions before the Board of Appeals and that it will expedite the enforcement of county law and streamline the appeal process.

The following departments reported no fiscal impact: Permitting Services, Environmental Protection, Fire and Rescue Service, and Transportation.

The following contributed to and concurred with this analysis: Alicia Thomas, Department of Permitting Services; Marc Hansen, Office of the County Attorney; Gladys Balderrama, Department of Environmental Protection; Dominic Del Pozzo, Fire and Rescue Service; and Bruce Meier, Department of Transportation.

JFB:aw

Table 1 – Notice of Violation – Required (Appeal to Board of Appeals)

County Code Sections	Description
1. Sections 4-11; 4-13	Amusement license- Revocation.
2. Sections 8-22; 8-23	Violations of Chapter 8, Buildings ("any other decision or order of the Department under this chapter").
3. Section 15-16	Restaurant Health Code Violation – License Suspension.
4. Section 17-28	Revocation of an electricians license.
5. Section 18-7	Trees – Dutch Elm Disease – Removal.
6. Chapter 22	Violation of Fire Safety Code – Except those violations imposing immediate risk (some ambiguity with Section 26-15).
7. Section 29-77	Mobile home parks, Director decision after notice.
8. Section 39-4	Rat infestation.
9. Sections 41-14; 41-16	Commercial camp ground – license suspension.
10. Sections 44-24; 44-25	Private educational institution – license revocation.
11. Sections 46-5; 46-6	Slaughter House – certificate revocation.
12. Sections 47-6; 47-7	Revocation of vendor's license.
13. Sections 48-27; 48-28	Solid waste permits – revocation and "any decision of DEP Director."
14. Sections 51-9; 51-13	Swimming pool license revocation.
15. Section 51A-10	Tanning facility license revocation.
16. Sections 54-26; 54-27	Boarding house license revocation.
17. Sections 59-A-3.43	Registered home or home health practitioner.
18. Section 59-G-1.3	Violation of condition of special exception.
19. Section 59-G-4.34	Non-complying multiple family dwellings.

Table 2 – Notice of Violation – Optional (Appeal to Board of Appeals)

County Code Sections	Description
1. Section 23A-11	Group Home regulations – license.
2. Sections 49-35; 49-36	Roads—grading and construction
3. Sections 58-4; 58-6	Weeds – removal.

Table 3 – Notice of Violation – Required (**No** Appeal to Board of Appeals)

County Code Sections	**Description**
1. Section 17-36	Defective electrical installation; equipment.
2. Sections 19-9; 19-12; 19-16; 19-28	Erosion, sediment control violations.
3. Section 24A-9	Demolition by neglect of historic resource – appeal to HPC.
4. Section 26-13	Condemnation of unsafe dwelling.
5. Section 26-15	Correction of severe violation of building, housing, fire or electrical codes necessary to protect public safety.
6. Section 42A-30	Ride share traffic mitigation plan.
7. Section 47-9	Vendors, removal of illegally sold goods.
8. Section 49-17	Snow removal.

Table 4 – Notice of Violation – Optional (**No** Appeal to Board of Appeals)

County Code Sections	**Description**
1. Section 3-13	Air quality.
2. Section 26-12	Housing standards violation.
3. Section 31B-12	Noise control violation.

Table 5 – Other Decisions Appealable to Board of Appeals

County Code Sections	Description
1. Section 2B-4	Land use activities in agricultural districts – any decision of DPS.
2. Section 24A-7	Historic area work permit.
3. Section 25-23	Hospital license – revocation.
4. Section 27A-5	Individual water and sewer systems (see Section 2-112).

MPH:jq
I:\GJ\HANSEM\Code Enforcement - NOV - Bd. of Appeals- Tables.doc

ABRAMS & WEST, P.C.
ATTORNEYS AT LAW
SUITE 760N
4550 MONTGOMERY AVENUE
BETHESDA, MARYLAND 20814-3304
(301) 951-1550
FAX: (301) 951-1543

KENNETH R. WEST
STANLEY D. ABRAMS
KEITH J. ROSA

PRACTICING IN MARYLAND AND DISTRICT OF COLUMBIA

JAMES L. PARSONS, JR.
OF COUNSEL

WRITER's DIRECT NUMBER
(301) 951-1540
EMAIL: "sabrams@awsdlaw.com"

May 7, 2009

Hon. Phil Andrews, President
Montgomery County Council
County Council Office Building, 6th Fl.
100 Maryland Avenue
Rockville, MD 20850

RE: Bill No. 22-09
Enforcement of County Laws

Dear President Andrews & Members of the County Council:

I write in opposition to certain provisions contained in this Bill which radically alters enforcement procedures relating to the issuance of a Notice of Violation by a county enforcement officer. Currently, an inspector issues a warning notice of violation which may be appealed to the County Board of Appeals. The Bill (§1-18(f)(4) and §8-23(a)) would prohibit any recipient of a notice of violation (NOV) from appealing the NOV to the Board of Appeals (unless such appeal to the Board is expressly granted by another County law) and instead requires the matter to be litigated in District Court. This has certain detrimental impacts upon property owners and other recipients of such notices.

(1) The Board of Appeals which is a citizens board would not be available to resolve enforcement issues involving citizens. The Board of Appeals has developed a certain expertise in these disputes over the years and operates on a much more informal basis than when matters are litigated in courts. Strict rules of evidence are not applied in Board proceedings whereas they are required in judicial proceedings and attorneys are not therefore necessary at an administrative level.

(2) If a Notice of Violation and municipal infraction which must be litigated in Court is the only basis to "appeal", the matter must be assigned a court date, responses filed by the alleged violator, the parties and witnesses wait around the courthouse for their case to be called and adjudicated by a judge. Certainly no time is saved over the scheduling of such matters before the Board of

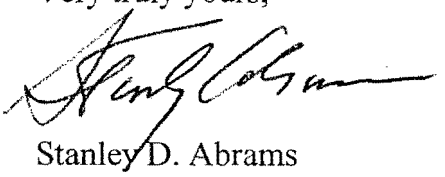
Appeals which specially sets the cases for hearing, hears the evidence and makes a decision. Have any studies been made of the two respective processes to see if indeed any savings in time or costs to resolve enforcement actions are improved by having the District Court hear all of these issues.

(3) The process proposed becomes punitive instead of remedial. Municipal infractions are enforced by the assessment of fines. In many cases the County Code provisions allow for each day of violation to become a separate violation subject to additional fines. Presently we try to work out a resolution with County inspectors before a municipal infraction is issued but if a NOV is issued under the proposed law, a case is filed by the County in District Court. Remedial action is not always available because courts are reluctant to grant continuances and even then unless the County dismisses the action, the fines may still be assessed.

The effect of this legislation is unclear with respect to Notices of Violation issued by inspectors for alleged violations of special exception conditions for approved special exception cases. Will the Board be permitted to issue "Show Cause Orders" or engage in other proceedings to determine compliance, because those proceedings are traditionally initiated by DPS issuing Notices of Violations to special exception holders? If the intent is not to remove the Board from this function, the legislation needs to be clarified.

This appears to be legislation in search of a problem. The County has successfully operated under the present system for 50 years with a citizen board. There is no reason to change it now.

Very truly yours,



Stanley D. Abrams

SDA:dw

cc: County Council Members
Michael Faden, Esq.
Catherine Titus, Esq.

(1) BILL 22-09
(2) BILL 23-09
(3) BILL 24-09
(4) ZTA 09-03

CC
SBF
LL
BD
ZTA

BOARD OF APPEALS

049511

June 10, 2009

Dear Mr. Andrews and Members of the County Council:

I am writing to you on behalf of the County Board of Appeals to provide you with our perspective regarding the three bills and the zoning text amendment that are the apparent result of the recommendations of the County Executive's Code Enforcement Work Group. I ask that this letter be entered into the record for testimony on Bills 22-09, 23-09, 24-09 and Zoning Text Amendment 09-03 at the Public Hearing that was held before the Council on Tuesday, June 9, 2009.

These proposals embrace a number of subjects; I will only address one aspect and that is the proposal to reduce the existing jurisdiction of the Board of Appeals to hear and decide several important matters.

For example, Bill No. 22-09 would amend Section 1-18 of the Montgomery County Code to provide that an enforcement officer may issue a notice of violation before issuing a citation, and there is <u>no right of appeal to the Board</u> from the decision to issue or decline to issue a notice of violation. The only recourse that a person has after receiving such a notice is to ignore the notice, await the issuance of a citation and then have the matter heard by a Maryland District Court Judge rather than the County Board of Appeals.

The legislation before you also would, among other things, eliminate the jurisdiction of the Board to hear appeals from:

[1] Decisions of the Department of Permitting Services to issue or rescind a stop work order.

(31)

[2] Decisions of DPS regarding notices of violations concerning home occupations.

[3] Decisions of DPS concerning the removal of obstructions of public rights-of-way.

[4] Decisions involving individual water supply and sewage disposal systems.

[5] Fire safety orders.

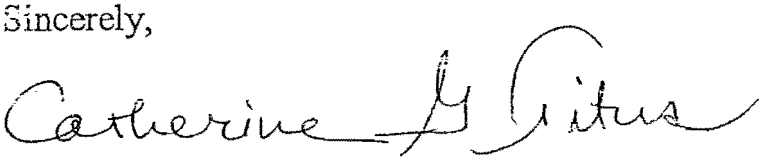
The Board is not seeking by this letter to maintain or increase its present workload. There may be good policy reasons to expand or contract the jurisdiction of the Board, and it is for you to make those decisions. You should, however, be aware of the consequences of changing the scope of the Board's jurisdiction. There are significant policy questions in the proposals before you that warrant careful reflection and consideration.

If the proposed jurisdictional changes are made, the result will be that judges of the District Court of Maryland will be making a number of decisions that, under present law, infrequently come before them. The Board, under present law, is accustomed to hearing and deciding such appeals, and has the benefit of the advice of the County Attorney in resolving the issues that come before it. District Court judges, on the other hand, have very high volume dockets and any involvement of the County Attorney is as an advocate, and not as an advisor.

If there is concern about the speed with which the Board can hear and decide certain appeals, an alternative approach might be to develop "fast track" procedures rather than to divert such cases away from the Board and to a State court. The courts of the State of Maryland have a number of important matters that come before them. It is understandable that local law violations may not get the same degree and quality of consideration that significant violations of State law are given.

For these reasons, we urge the Council to defer acting on the proposals before you until they are evaluated in light of these policy concerns, and with the benefit of broader consideration by representatives of the Board and other governmental and citizens' groups that may be affected by the proposed changes.

Sincerely,



Catherine G. Titus
Chairman

f:/Correspondence 2009

June 2, 2009

Cathie –

You asked me to look at this legislation to see how it would impact the Board's work and the administrative appeal process. By way of background, I also spoke with Marc Hansen, who was on the working group which proposed some of these changes and who said that the principle impetus for removing NOV appeals from the Board's jurisdiction was to streamline the enforcement process. This is intended to give greater relief to communities which have felt that slow enforcement of certain kinds of code violations erodes community quality of life.

This Bill appears to limit the Board of Appeals' appellate jurisdiction to appeals of permits and licenses under chapters 48 and 49. It removes from the Board's jurisdiction appeals of Notices of Violation issued by an enforcement agency, appeals of Fire Safety orders, and "any other order of the Department (of Permitting Services), including a decision to issue or rescind a stop work order." (Section 8-23, page 8, line116-117).

In 2006 32 administrative appeals were filed. Notices of Violation were the subject of seven of those appeals, five of which were dismissed, four withdrawn before a public hearing, and one for failure to appear. Two appeals of Notices of Violation were denied. Four appeals were of letters issued by the Department of Permitting Services, which Bill 22-09 would remove from the Board's jurisdiction, three of which were dismissed, and one granted. Other appeals in 2006 which would apparently not be able to be heard under this legislation included an appeal of a Certificate of Non-Conforming Use (A-6123, dismissed/withdrawn), a Use and Occupancy Certificate (A-6174, dismissed), a Home Occupation Certificate (A-6178, dismissed). There was also an appeal, likely excluded by the instant bill, of a decision by the Department of Public Works and Transportation, involving both an NOV under Chapter 48, and DPWT's application of a regulation pertaining to recycling, and the location of recycling containers. This case has been stayed following a joint motion from the parties. The remaining 17 cases concerned building permits and decisions of the Historic Preservation Commission (HPC), which would stay within the Board's jurisdiction.

In 2007 28 administrative appeals were filed. Notices of Violation were the subject of ten appeals, eight of which were dismissed, seven before a hearing, one on the hearing date. One appeal was denied, one granted. Other appeals filed in 2007 which would be excluded by Bill 22-09 include: one appeal of a refusal by DPS to lift a stop work order (A-6208, dismissed), one appeal of DPWT's issuance of an Invoice for a Transportation Management District Fee (A-6234, dismissed), an appeal of a memorandum issued by DPS (A-6237, dismissed), and a letter issued by the Department of Housing and Community Affairs (A-6236, dismissed). The remaining 14 cases concerned building permits and HPC.

In 2008 20 administrative appeals were filed. Notices of Violation were the subject of four appeals, one of which was granted, and three dismissed as withdrawn before a public hearing. Seven appeals were of letters issued by the Department of Permitting services; one of these was denied, five have been dismissed, one has a future hearing date. One appeal of a decision of the Department of Fire and Rescue Services was filed in 2008, and would be excluded by Bill 22-09.

To-date in 2009, five administrative appeals have been filed. Three of these are of letters issued by the Department of Permitting Services, one was recently withdrawn, and two have future hearing dates.

Thus, over the last three and a half years twenty one appeals of Notices of Violation were filed with the Board and fourteen of those were resolved by the Department of Permitting Services before a public hearing was held. Eliminating these appeals from BOA jurisdiction would not seem to have a large impact on the Board's workload. And, parties will have recourse in these cases through the courts.

Removing the right to appeal the issuance or rescission of stop work orders to the Board is a distinct question over which there will clearly be differences of opinion.

Removing the right to appeal ""any other order of the Department" as this bill does, is a broader, less defined change, which may unwittingly eliminate appeal rights which exist under current law. Nineteen of the 85 appeals filed with the Board since 2006 seem to fall into this 'other' category. Although fifteen of them were dismissed, seemingly resolved outside the public hearing process (one was granted, one denied, and two are pending at this time) it is not clear what recourse, if any, parties would have with respect to these types of decisions under the proposed change.

I ran reports from the database, listing all administrative appeals filed in years 2006 to the present. I'll put copies of the reports in the Board's boxes for tomorrow.

Katherine Freeman
Executive Director
Montgomery County Board of Appeals
(240) 777 6606

Testimony of Assistant Chief Administrative Officer Thomas Street
Public Hearing, June 9, 2009
ZTA 09-03, Home Occupations and Residential Off-Street Parking
Bill 22-09, Enforcement of County Laws – Notice of Violation - Appeals
Bill 23-09, Unused Vehicles - Storage
Bill 24-09, Buildings – Permits and Inspections

Good evening.

I am Thomas Street, Montgomery County Assistant Chief Administrative Officer. I want to thank Council President Andrews for sponsoring Zoning Text Amendment (ZTA) 09-03, and Bills 22-09, 23-09, and 24-09 on behalf of the County Executive, and the full Council for its timely consideration of these items. ZTA 09-03 proposes changes to County's Zoning Ordinance, while Bills 22-09, 23-09 and 24-09 propose changes to several chapters of the County Code. This legislative package modifies the authority of the County's code enforcement agencies, amends the definition of rubbish in Chapter 26, clarifies portions of Chapters 26 and 48 regarding unused and inoperable vehicles, and establishes a building permit life for detached one-and-two family dwellings and townhouses and their accessory structures.

Since his election in 2006, the County Executive has met with numerous individuals and civic groups from around the County to discuss neighborhood concerns about code-related problems and their negative effect on communities. These individuals and groups raised issues relating to unkempt properties, solid waste, impassable streets, untagged or abandoned vehicles, cars parked on front lawns, and home-based businesses. They also expressed concern about the length of time between the issuance of a notice of violation and correction of that violation.

In response to these concerns, the Executive created a Code Enforcement Work Group which he charged with conducting a comprehensive review of code enforcement activities and making recommendations to improve public safety, preserve the character of residential neighborhoods, and otherwise preserve and enhance the quality of life in the County. That Work Group was comprised largely of Executive staff representing the various agencies whose responsibilities include enforcing the County Code.

The Work Group, with the assistance of County Council staff, reviewed a number of case studies, identified a number of general issues common to many of the case studies, and developed a set of recommendations that are intended to address many of the issues that concern communities throughout the county. Proposed solutions fall into three broad categories:

1. Legislative changes;
2. Improved coordination and cross training for inspectors; and
3. Education and outreach programs for residents and community associations.

The legislative proposals that are the subject of this public hearing implement many of the recommendations of the Work Group and are part of a bold plan endorsed by the County Executive to remedy negative conditions that have evolved in residential neighborhoods over a long period of time. Collectively, the proposals attempt to strike a balance between addressing

safety and quality of life issues and respecting the change in residential land use that has occurred over the last 50 to 60 years.

The Council, by enacting Bill 27-08 in January, has already implemented the Work Group's and the County Executive's recommendations regarding on-street parking of heavy-commercial and recreational vehicles in residential neighborhoods.

ZTA 09-03 would amend the Zoning Ordinance to:

1. Allow DPS to immediately issue a citation to a person violating home occupation provisions;
2. Require DPS to conduct on-site inspections before approving a registered home occupation;
3. Require use and occupancy certificates for certain dwellings;
4. Require a person conducting a home occupation to provide proof of the person's home address;
5. Clarify the limits on the number of client visits to a home occupation;
6. Clarify the limits on the number of employee visits to a registered home occupation;
7. Define heavy and light commercial vehicles and prohibit off-street parking of heavy commercial vehicles on residentially zoned property;
8. Limit the amount of parking on the front yard of certain residential parcels; and
9. Make the text of the Zoning Ordinance more precise, concise, and decisive.

I would like to add that the County Executive will be asking for a technical amendment regarding limits on parking on the front of residential parcels. He would like R-40 properties treated the same as R-60 properties.

Bill 22-09 would expedite the process for resolving code violations and repeal obsolete language in the fire safety code.

Bill 23-09 would resolve discrepancies between Chapters 26 and 48 regarding storage of unused or inoperable vehicles and give sole enforcement authority for these types of violations to the Department of Housing and Community Affairs.

Bill 24-09 would require certain detached one-and-two family dwellings and townhouses to obtain an approved final inspection within 18 months after DPS issues an initial building permit. Under current law, there is no deadline for a final, approved inspection and many projects languish without any progress.

In closing I want to emphasize the County Executive's view that the issues addressed in the various proposals are inter-related and that the Council would be best served by considering these bills as a comprehensive package.

Thank you for your time this evening. The County Executive looks forward to working with you in passing this important legislative package.

June 9, 2009

MCCF Testimony to County Council on Bill 22-09, Notice of Violations - Appeals

I am Jim Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of the Planning and Land Use Committee. We ask that Council members consider the following concerns of the Federation regarding new restrictions on appeals rights which are included in Bill 22-09.

- We understand the value in eliminating the right to appeal the issuance of a Notice of Violation. At the same time we believe that residents, especially adjacent neighbors of a home construction site, should retain the right to challenge, in the Board of Appeals, a decision by DPS not to issue a Notice of Violation.
- We are concerned by the elimination of the current 30 day waiting period, after DPS issuance of a Notice of Violation, before the Department may issue a citation which may impose fines or other remedies. While the speeded-up issuance of a citation and imposing of fines and other remedies allowed by this legislation may result in a faster resolution to unsafe or unhealthful situations, we are concerned that the elimination of the waiting period will not allow builders or homeowners sufficient time to correct a violation before imposition of fines can occur.
- We strongly oppose the provision in the bill that would eliminate the right to appeal a decision by DPS not to issue a Stop Work Order, or to lift a Stop Work Order. At the same time, just as in the case with the Notice of Violation issue (see first bullet item above), we understand the value in eliminating the right to appeal the issuance of a Stop Work Order since such appeal could delay the cessation and remedy of an unlawful or unsafe condition.
- Although it is not specifically addressed in the legislation, we recommend that the right to appeal a Building Permit Revision be specifically authorized in the County Code, just as the right to appeal DPS issuance or failure to issue a Building Permit is now authorized. Although the neighbors or affected neighborhood association may not have concerns regarding the initial issuance of a Building Permit, they may have wish to challenge DPS approval of a revision to a Building Permit which they believe may have a negative impact.
- Finally, in your consideration of Bill 22-09, please keep in mind that the right of county residents to file appeals of administrative actions before the Board of Appeals, a citizen body composed also of county residents, guarantees an affordable avenue of redress for actions considered unwise or unlawful. If such appeals are relegated to Circuit Court or District Court, the court costs and necessity to hire an attorney make such appeals unaffordable to most county residents.

As always, the Federation stands ready to assist Council members in your consideration of this legislation. Thank you.

① Bill 22-09
② Bill 23-09
③ Bill 24-09
④ ZTA 09-03

CC
BD
JZ

Greater Colesville Citizens Association
PO Box 4087
Colesville, MD 20914

County Council
Attn: Phil Andrews, President
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 217
Rockville, Maryland 20850

049488

June 9, 2009

Re: Bills 22-09, 23-09, 24-09 and ZTA 09-03

Dear Councilmember:

GCCA discussed the three bills and one zoning text amendment (ZTA) at its June 1 meeting and voted to take the positions provided below.

GCCA would like to thank the County Executive and Council for taking the time and effort to correct problems with the zoning laws and administration that will have a great benefit to citizens of the County.

Bill 22-09. GCCA supports the first part of this bill as a way to quickly address violations, but has not taken any position on the fire code standards and solid waste infractions. By eliminating the ability to appeal violations before the Board of Appeals, the time to address violations will be shortened by six months or more. Also allowing the inspectors at their discretion to issue a citation immediately, rather than just issuing a Notice of Violation, allows action to be taken quickly for major violations or violations from repeat offenders. These two steps will help restore faith in the zoning enforcement and help improve the morale of County inspectors, which must surely be poor under the existing law. We also support continuing the provision that allows citizens to appeal to the Board of Appeals in those rare situations where they feel that a building permit should not have been issued.

Bill 23-09. This bill as written created a lot of discussion on the GCCA Board. On the one hand we want to have old junked vehicles removed from residential properties. However, a number of people have antique cars or ones they are planning to restore which this bill as written would not allow them to keep, except in a garage or other building. Many citizens do not have a garage but keep such vehicles under a tarp or in a carport. Because of the last concern, the majority of the GCCA Board voted to oppose the bill as written. We urge the Council to find a way to address both issues.

Bill 24-09. GCCA supports this bill as a way of having structures built within a reasonable period of time once a building permit has been issued. One of the new members to the GCCA bought a house when they moved to Colesville that never had a final inspection but had been occupied for some 17 years. The fact that it was not a legal structure never came to light before the settlement and not until several months after they

occupied the house. Having a time limit for when a valid inspection is made should help prevent that kind of event from occurring again. We also request that the inspector ensure that the building was not built as part of the process to revoke a building permit. GCCA also had the concern, not addressed by this bill, about completing a structure or demolishing a structure that had been started but not completed. With the recession and housing bust, this has been more of a problem. GCCA also urges the Council to address this problem, if there is not already a way to address it.

ZTA 09-03. GCCA supports this legislation to deal with home occupations and off-street parking. For home occupations, we support the requirement to require an inspection before a major home occupation can begin as a means of verifying the site conditions, and thus settle differences between the homeowner and neighbors before they occur. GCCA also supports the ability of the inspector to issue a notice of violation immediately rather than first issuing a warning. This will result in violations being rectified in a timely manner rather than dragging out for months. The last home occupation change of requiring the owner to show proof of home address will reduce problems that occur with the owner not actually living there, which is a requirement. (Now they only need to live there 220 days a year.)

GCCA strongly supports the provision to limit the amount of front yard that can be covered as a way of retaining a residential character of the house. Having a fully paved front yard, which occurs all too often today, makes the property look more like a commercial one. It also has a negative impact on the amount of storm-water run-off, which often impacts downhill neighbors and the environment.

GCCA also supports the other part of the ZTA that prohibits the parking of heavy commercial vehicles in one-family zones. Such parking is an eyesore to the remainder of the neighborhood and introduces a commercial feel, which doesn't belong in a residential area.

Sincerely,

Thomas M. McNamara

Thomas M. McNamara
President

Daniel L. Wilhelm
Vice President

P.S. If you have any questions, please talk to Don Wilhelm

Testimony
Mid-County Citizens Advisory Board
to the
Montgomery County Council – June 9, 2009

ZTA 09-03, Home Occupations and Residential Off-street Parking
Bill 22-09, Enforcement of County Laws – Notice of Violation – Appeals
Bill 23-09, Unused Vehicles – Storage
Bill 24-09, Buildings – Permits and Inspections

Good evening Council President Andrews and Members of the Montgomery County Council. I am Sheldon Fishman, Chair of the Mid-County Citizens Advisory Board (MCCAB) – my address is 9913 Dameron Drive, Silver Spring, Maryland 20902.

Code enforcement matters have been at the forefront of our agenda for the past three years. What began as a concern with a specific home involved in a fire, then became a valid concern regarding code enforcement issues throughout the Aspen Hill area, and grew to the entire Mid-County region. It was the position of the MCCAB just prior to County Executive Leggett taking office that it was necessary to undertake a systemic review of the entire code enforcement process. We heartily applauded Mr. Leggett's immediate action to meet with the community and form a Code Enforcement Task Force to undertake such a comprehensive review.

The MCCAB did have the opportunity to review the proposed Code Enforcement Work Group Final Report to the County Executive and I am pleased to testify that the entire set of recommendations listed in the Executive Summary of the Final Report was fully endorsed by our Board.

You now have before you for deliberation and approval, the necessary legislation to implement the recommendations of the Final Report: (1) a Zoning Text Amendment on Home Occupations and Residential Off-street Parking; (2) Bill 22-09, Enforcement of County Laws – Notice of Violation – Appeals; (3) Bill 23-09, Unused Vehicles – Storage; and Bill 24-09, Buildings – Permits and Inspections. This integrated package of legislation will allow for the preservation and protection for all our communities. We look forward to the Planning, Housing and Economic Development Committee's review of this legislation and their recommendations to the full Council.

We very much appreciate your consideration of this legislation and your commitment to protect and improve the quality of life for the residents of Montgomery County. Thank you for the opportunity to testify before you this evening.

THE NORTHWEST PARK OAKVIEW WEED & SEED PROGRAM
SILVER SPRING REGIONAL SERVICES CENTER
MONTGOMERY COUNTY GOVERNMENT

June 8, 2009

The Members of the Montgomery County Council
Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Subject: Support for County Executive Proposed Legislation (ZTA 09-03, Bill 22-09, Bill 23-09, Bill 24-09)

President Andrews and Members of the Montgomery County Council:

We are writing today to express our support for Montgomery County Executive, Isiah Leggett's, proposed legislation governing:

a. Bill 22-09, Notice of Violation and Jurisdiction of Board of Appeals
b. ZTA 09-03 Zoning Text Amendment – Home Occupations and Residential Off-street Parking
c. Bill 23-09, Amendment to County Code - Unused Vehicles Storage
d. Bill 24-09, Buildings – Permits and Inspections

Background:

The Weed & Seed Program is a Department of Justice strategy aimed at "weeding out" persistent criminal activity and "seeding in" programs and services to address the needs of families living within its boundaries. Administered through Montgomery County's Silver Spring Regional Center the program stresses collaboration, coordination, and communication across a broad range of non-profit, public and government agencies to ensure success. The program serves approximately 10,000 Montgomery County residents, some of whom reside in two residential subdivisions known as Oakview and the Hamptons neighborhoods.

In the Spring of 2007, the Oakview Citizen's Association requested that the Weed & Seed Program initiate a Nuisance Abatement Initiative to address the issues impacting the quality of life of the 700 home community. With assistance from the Silver Spring Regional Center the Weed & Seed Program was able to form a task force of Montgomery County agencies and partners that included:

a. Montgomery County Police Department's 3rd District
b. The State's Attorney's Office of Montgomery County
c. The County Attorney's Office

THE NORTHWEST PARK OAKVIEW WEED & SEED PROGRAM
• 8435 Georgia Avenue • Silver Spring • Maryland • 20910
Telephone: (301) 565-7300

d. The Department of Solid Waste
e. The Department of Permitting Services
f. Code Enforcement
g. Fire & Rescue
h. The Silver Spring Regional Center
i. The Maryland International Corridor CSAFE

This collaboration of sister agencies was named the "NATF" (Nuisance Abatement Task Force). A formalized reporting system for residents was established to ensure that all enforcing agencies would have the ability to review the complaint and dispatch police officers or investigators if needed. Additionally, a community survey was conducted to determine the scope of work that would need to be managed during the implementation of this initiative.

Some of the items often complained about by Oakview residents include: the large number of unregistered vehicles; businesses being run out of the home that include tow truck companies and the sale of food to the public; and large commercial vehicles parked on private property and residential streets. The County Executive's proposed legislation would address all of these issues and resonates to the heart of what these residents want addressed by local government, as evidenced by voicing their concerns at community meetings, Weed & Seed meetings and through their request for the formation of, and participation in, the Nuisance Abatement Task Force.

In addition to current county legislation, a member of the Nuisance Abatement Task Force from Montgomery County's State's Attorney's Office, worked with Senator Jamie Raskin and subsequently testified before the Maryland General Assembly, on a Senate Bill that would've resulted in the expansion of Maryland Law allowing the seizure of private property when utilized as a haven for the sale of drugs to the community.

Implemented in the fall of 2007 the Nuisance Abatement Task Force in collaboration with Oakview residents continues to operate and attempts to address the issues negatively impacting their quality of life.

Steering Committee Action

The Steering Committee was made aware of pending legislation by the program site coordinator during its quarterly meeting on May 21, 2009. Based upon the information provided, the committee generated four separate motions based on the proposed legislation, held discussion and unanimously passed each motion in support of the County Executive's proposals. We hope that the members of the Montgomery County Council will vote similarly after hearing the testimony of residents on June 9th, 2009. To not enact these changes would result in the continued eroding of the quality of life in Montgomery County neighborhoods.

Thank you for providing us this opportunity to submit this written letter in support of the County Executive's proposed legislation. We look forward to the enhanced quality of life benefits received by residents living in the Oakview and broader Montgomery County Community.

Attached is a listing of participating organizations making up the Northwest Park Oakview Weed & Seed Steering Committee.

On Behalf of the Steering Committee,

Victor B. Salazar, Site Coordinator
& Chief Administrative Officer to the
Steering Committee

Cc: Montgomery County Executive, Isiah Leggett
Weed & Seed Steering Committee

THE NORTHWEST PARK OAKVIEW WEED & SEED PROGRAM
• 8435 Georgia Avenue • Silver Spring • Maryland • 20910
Telephone: (301) 565-7300

A PARTIAL LIST OF PARTNERING AND PARTICIPATING ORGANIZATIONS OF THE WEED & SEED STEERING COMMITTEE

Resident Organizations

Kay Management at Northwest Park Apartments
Northwest Park Community Association
Southern Management Corp. at Hampshire West Apartment Community
The Oakview Citizens Association
Southern Management Corp. at the Chateau Apartment Community
Laramar, LLC, at Avery Park Apartment Community
The Avery Park Community Association
The Hampton's Homeowners Association

Community Based Organizations

The Maryland International Corridor CSAFE
The Long Branch Neighborhood Initiative
The YMCA Community Center at Northwest Park Apartments
The YMCA/Youth & Family Services
The YMCA/Linkages to Learning Program
The Long Branch Athletic Association
The Silver Spring Citizens Advisory Board
St. Camillus Parrish
St. Camillus Private School
Good Shepherd United Methodist Church
IMPACT Silver Spring
The Northeast Consortium of MCCPTA

Agencies

The Office of Congressman Chris Van Hollen
The Office of Congresswoman Donna Edwards
The U.S. Attorney's Office
The State's Attorney's Office of Montgomery County
The Montgomery County Police Department, 3rd Police District
The Maryland-National Capital Park Police, Montgomery County Division
Broad Acres Elementary School, Montgomery County Public Schools
Roscoe Nix Elementary School, Montgomery County Public Schools
The Silver Spring Regional Services Center, Montgomery County Government
The Department of Housing & Community Affairs, Neighborhood Revitalization, Montgomery County Government
The Long Branch Library, Montgomery County Government

THE NORTHWEST PARK OAKVIEW WEED & SEED PROGRAM
• 8435 Georgia Avenue • Silver Spring • Maryland • 20910
Telephone: (301) 565-7300

TESTIMONY OF NORMAN G. KNOPF
IN OPPOSITION TO BILL 22-09
ON JUNE 9, 2009

As an attorney representing citizens challenging unlawful conduct by the DPS, I urge you to reject Bill 22-09. This legislation strips citizens of the right to challenge actions believed to be unlawful by DPS. It, in effect, grants immunity to DPS for unlawful conduct.

1. Under present law, an aggrieved citizen has the right to appeal to the Board of Appeals "the issuance, denial, renewal or revocation of a permit ***or any other decision or order of the Department [DPS] under this chapter [Building Code]***." (§8-23; also, §4.11, which has not been mentioned in the proposed bill but is inconsistent with the proposed revisions of the bill).

Citizens have 30 days from such action by the Department to appeal to the Board of Appeals. The Board of Appeals procedure is citizen friendly, not costly or technical, as Court enforcement litigation would be.

The proposed legislation - §8-23 – limits the citizens' right to challenge DPS unlawful action to the "issuance, denial, renewal or revocation of a permit"; it eliminates the right of citizens to appeal any other decision or order of DPS.

For example, a building permit may be issued for a residence, which plans show a height which is in compliance with Code. Therefore, a next door neighbor would have no reason to appeal the issuance of the building permit. However, after 30 days has elapsed and the building is under construction, if the neighbor notices that the building is being built higher than what is on the plans, in violation of the Code, **THIS LEGISLATION EFFECTIVELY ELIMINATES THE RIGHT OF THE CITIZEN TO GO TO THE BOARD OF APPEALS TO OBTAIN RELIEF SHOULD DPS FAIL TO ACT.**

Specifically, under the current procedures, the citizen goes to DPS and complains. It asks DPS to issue a Notice of Violation. If DPS refuses to issue such an order, under current law the citizen may take that decision of refusal to the Board of Appeals to try to get it reversed.

Under the proposed legislation - §8-23 – this refusal to issue a Notice of Violation would come within the category of "any other decision or order" of the Department and thus would not be appealable to the Board.

This is made even more clear by §1-18(f)(4) of the bill which provides that "a person may not appeal to the Board of Appeals a decision by an enforcement officer to **issue or decline to issue a Notice of Violation under this subsection**."

The citizen is effectively rendered remediless, unless he wants to undergo expensive procedures before the District Court and probably requiring hiring a lawyer.

2. Further changes in the law make matters worse. For example, under the current procedures, when a client comes to me and states that he believes that there is a violation of County law in connection with the construction of a building, I advise him that he does not need a lawyer or need to file any action with the Board – **yet**. He should go to DPS and complain. DPS might correct the situation itself.

And in fact on occasion a citizen is successful at DPS by pointing out alleged violations. DPS investigates, and DPS may then issue a stop work order until the violation is corrected. This is the way the system should work because it is easy for the citizen and gives the administration agency the first chance to correct the situation.

However, under this bill, if DPS rescinds the stop work order, there is no right of appeal to the Board. §8-23.

What does this mean as a practical matter? It serves no purpose for the citizen to go to DPS to complain. If DPS issues a stop work order, but then rescinds it, the citizen is left without any right of relief.

I have a case now pending before the Board in which DPS granted a building permit for a project which my clients believe requires a special exception. DPS granted a stop work order. After

more than 30 days from the issuance of the building permit so that the permit itself is no longer appealable, DPS rescinded the stop work order. My clients have appealed that rescission to the Board of Appeals. Under this legislation they would be remediless.

3. Finally, under current law, §8-22, DPS has the authority to issue notices for a violation of any provision of the Building Code chapter, "or any other applicable federal, state or local law or regulation". Under the proposed legislation, DPS authority is restricted to violations only of the Building Code. Thus, if citizens point out a clear violation of federal or state law, for example, building in the wetlands, discharging waste into a stream, and so on, DPS has no authority to have the violator correct the situation. This makes no sense.

This is another example of the "immunizing" of liability by DPS that I referred to in the opening.

The 3-minute time limit limits further explanation of how the proposed legislation would work in numerous areas to thwart good enforcement of County Code provisions and the average citizens' ability to obtain such enforcement. I urge rejection.

Testimony of Carol Placek Regarding Proposed Bill 22-09
June 9, 2009

I am testifying today to ask the County Council to revise the proposed Bill 22-09 to remove all language that restricts the jurisdiction of the Board of Appeals to hear certain appeals brought by citizens, including but not limited to lifting of stop work orders and notices of violation, permit revisions and Department of Permitting Services ("DPS") action or inaction regarding reported building code violations.

1. Bill 22-09 is being submitted under false pretenses.

   A. The proposed bill does not merely "make a number of mainly technical changes in the process to enforce County laws" as Council Attorney Faden's letter represents, but eliminates important substantive rights of citizens to appeal when DPS has not properly enforced county laws.

   B. Mr. Leggett has incorrectly claimed that this bill's provisions emanate from and will "implement the recommendations included in the November 2008 final report of the Code Enforcement Work Group" and are "intended to address code enforcement problems which erode the quality of life in the County" (April 2, 2009 letter to Council President Phil Andrews). Mr. Leggett either has not read the Code Enforcement Work Group final report or perhaps is being careless, as the Work Group final report has no discussion at all of restricting citizen rights to appeal permit revisions, lifting of stop work orders or notices of violation or other decisions currently appealable under Section 8-23. Eliminating these appeal rights makes less work for the Board of Appeals and potentially embarrassing results for DPS. However, the appeal rights provide an extremely valuable and necessary check on otherwise unchecked statutory interpretation and enforcement powers wielded by DPS, especially since DPS regulations are either lacking, incomplete, lack adequate definition of terms or allow interpretation that runs contrary to legislative intent.

2. The present broad appeal rights that extend beyond permit issuance serve a valuable purpose.

   A. Appeals help ensure that DPS interprets and enforces laws properly and consistently.

   B. Appeals protect against potential graft to overlook code violations.

   C. Permit revisions should be appealable to prevent developers from using permit revisions to add objectionable or illegal elements because they could not be appealled. Remember Clarksburg, similar situation.

   D. These appeals are necessary to balance developers' influence on DPS and protect against potential graft. Developers have regular contact with DPS and DPS sees its mission as keeping the development pipeline flowing, so citizen complaints are often treated as a nuisance. Furthermore, developers know that critical aspects of building

plans are not checked to ensure that the construction matches the plan, so they can deviate from plans without reprecussions. For example, the built footprint under addition permits is never measured to ensure that the addition does not exceed the maximum allowed footprint increase (compliance with DPS Policy ZP0204). The height of construction under addition permits also is not checked. Citizens who have to live with the results of these lapses in enforcement need the appeal right to ensure that the law is enforced.

E. Lastly, DPS does not always want to enforce the laws. As discussed later in my testimony, DPS issued multiple building permits to a commercial developer that had no contractor's license whatsoever and refused to pull the permit when I brought this to their attention. This violated both Maryland law and County law provisions.

3. <u>There is no other mechanism to serve these purposes.</u>

   A. Circuit courts with stricter rules and evidence standards as a practical matter prevent ordinary citizens from proceeding without an attorney at prohibitive cost. Furthermore, the court judges do not have the knowledge base or time to learn that the Board of Appeals has to properly consider the facts and rule on these appeals.

   B. The Board of Appeals is a proper dispute resolution forum because it is citizen friendly, the Board can question witnesses to explore issues and with a five person panel provides opportunity to discuss issues and critique reasoning.

   C. The appeals process is not perfect, but citizens should have broad appeal rights because they have to live with the results of DPS mistakes or lack of enforcement every day.

4. <u>I have brought an appeal, and the appeal process can motivate change, as it did in my case.</u> I have brought two appeals before the Board for noncompliance with code provisions and have argued in two higher courts to support the decision of the Board of Appeals.

   Before my appeal, DPS never bothered to enforce state or county law that prevented an unlicensed contractor from getting a building permit. DPS fought my valid and accurate claim, evidenced by a certification letter from Maryland's DLLR, that DPS should not have issued multiple building permits to an unlicensed developer reconstructing and flipping houses on my street. As a result, I have two 3500 square foot houses a few houses away that were built by a commercial developer with no license whatsoever. DPS refused to pull the permits. However, I notice that now the contractor license number appears on the permit application and is reviewed.

<u>CONCLUSION</u>

When basic laws are not enforced by DPS, an appeal right for citizens is essential.

Furthermore, administrative appeal fees should be lowered and the Council should have a way of tracking how many people have made complaints about DPS enforcement but have not mounted a formal appeal. To not do so leaves the Council with the unrealistic impression that everything is fine and that DPS is interpreting and enforcing laws as the Council intended.

In summary, I ask the Council to recognize that

- Bill 22-09's provisions with respect to limiting citizen rights of appeal were never recommended by the Code Enforcement Work Group;

- the current Section 8-23 rights to appeal permit revisions and DPS non-enforcement of reported code violations serve a valuable purpose not elsewhere addressed and should not be restricted and the cost to file appeals should be reduced; and

- issues with DPS interpretation and enforcement actions need to be monitored by the Council to ensure that long debated legislation is implemented in the way intended by the County Council.

Thank you for your efforts and attention in this matter.

Carol Placek
10246 Parkwood Drive
Kensington, MD 20895
(301) 530-3627

Building on Construction Litigation Procedure

by Paul N. Farquharson View Biography
Gregory Arbogast
Semmes, Bowen & Semmes, [incorporation phrase format]A Professional Corporation View Firm Credentials
Baltimore Office

More...
Articles by this author
Articles by this firm
Articles by this topic

August 10, 2009

Previously published on July 2009

Montgomery County v. Longo, No. 1075 (Md. Ct. Spec. App. July 7, 2009)

This case reviews and sets administrative procedures for building permit violations in construction cases. In *Montgomery County v. Longo*, the Court of Special Appeals established that the Board of Appeals of Montgomery County had the authority to hear an appeal from the Department of Permitting Services' ("DPS") decision to lift a stop work order. Montgomery County Code § 8-23 (2002) provides that, "Any person aggrieved by the issuance, denial, renewal, or revocation of a permit or any other decision or order of [DPS]...may appeal to the County Board of Appeals." The Court of Special Appeals held that a decision to lift a stop work order falls within the, "any other order" provision of § 8-23.

Montgomery County v. Longo revolves around a dispute over a home renovation. Ms. Longo owned a home in Montgomery County, but she wanted a larger house on that same property. As a result, she obtained a building permit to build an "addition." That permit allowed her to build a home that did not exceed the original footprint by 100 percent and retained 50 percent of the existing exterior walls. Ms. Longo retained two of the four walls of the original home, but she significantly changed them by removing a chimney and garage doors. Her neighbor, Ms. Carol Placek filed a complaint with the DPS for a violation of the building permit. DPS issued a stop work order. DPS met with Ms. Longo and she was able to convince DPS that her renovations did not violate her building permit. DPS permitted her to resume construction. Ms. Placek appealed that decision to the County Board of Appeals, which reinstated the stop work order. Ms. Longo appealed that decision to the Circuit Court, which held that the Board of Appeals did not have authority to hear this case because it found that repealing a stop work order was not appealable under § 8-23. Ms. Placek then appealed the Circuit Court's decision to the Court of Special Appeals.

The Board of Appeals, the Circuit Court and the Court of Special Appeals all relied on the case *Nat'l Inst. of Health Fed. Credit Union v. Hawk*, which appeared to be one of the few instructive cases on appellate review of building permits. 47 Md. App. 189 (1980). In Hawk, the County interpreted a building permit months after it issued that permit and after the time to appeal the issuance of the permit expired. Id. at 192. Several area residents appealed the County's interpretation of that permit. Id. at 195. However, the court held that the interpretation was an extension of the issuance of the permit. Id. The court found that the interpretation did not fall under the "any other order" portion of § 8-23 because it was really part of the "issuance" portion of that clause. Id. Since the time to appeal the issuance had already expired, the Board of Appeals could not hear the appeal. Id.

In Longo, the Court of Special Appeals found that lifting a stop work order was not an extension of the issuance of the original permit and, therefore, Hawk was not controlling. The court found that a stop work order is issued and lifted under a material change of circumstances not contemplated at the time the permit is issued

The views expressed in this article are solely the views of the author and not Martindale-Hubbell. This article is intended for informational purposes only and is not legal advice or a substitute for consultation with a licensed legal professional in a particular case or circumstance.

Faden, Michael

From: Allison Fultz [afultz@kaplankirsch.com]
Sent: Friday, July 10, 2009 12:26 PM
To: concilmember.knapp@montgomerycountymd.gov; Elrich's Office, Councilmember
Cc: Zyontz, Jeffrey; Faden, Michael
Subject: COMMENT ON BILL 22-09 - PLEASE INCLUDE IN PHED COMMITTEE PACKETS

Allison Ishihara Fultz
4509 Dalton Road
Chevy Chase, MD 20815
(301) 657-3710
afultz@alumni.princeton.edu

July 10, 2009

RE: Bill 22-09

"It is as much the duty of government to render prompt justice against itself, in favor of its citizens, as it is to administer the same, between private individuals."
- Abraham Lincoln

Dear Nancy, Mike and Marc -

I write briefly to urge Council to amend various provisions of pending Bill 22-09. Several of the changes it proposes go far beyond the "technical." In many regards, as currently drafted, this bill would utterly deprive County citizens of the right to challenge actions by County agencies that appear improper and therefore warrant review.

The Court of Special Appeals issued its decision in *Montgomery County v. Longo* just this week, and upheld the Board of Appeals' determination that a decision to lift a stop work order may constitute a final, appealable decision if the stop work order was imposed to sort out the type of building permit that should have initially been issued. The larger implication of the Court's decision is that superficial characterizations of the nature of an agency's actions are not sufficient to determine what rights are at stake. The current version of Bill 22-09 would lock such conclusory determinations into law and should accordingly be revised.

As the immediate past chair of the Board of Appeals, I am aware of and associate myself with the comments that have already been provided by others in this proceeding in support of generally retaining jurisdiction in the Board of Appeals where the County Code currently so requires.

Following is a list of comments on specific provisions:

Sec. 1-18. Enforcement procedures. Allowing Notices of Violation to be addressed as civil citations and handled through the District Court may make enforcement more efficient. However, enforcement must be diligent in order to be effective, no matter what the venue through which it proceeds. This is the larger issue, and one which the legislation can effectively address by making enforcement mandatory rather than by leaving the discretion to enforce to the County agency.

Many of the issues we dealt with during my service on the Board of Appeals arose out of inconsistent or lax enforcement efforts by the County. Violators did little to come into compliance because they knew that action by the Board of Appeals would not necessarily result in enforcement by other arms of the County.

A notice of violation should provide a reasonable cure period. If the responsible party fails to cure within that period, a civil citation should be the automatic next step. Fines should be cumulative and accrue daily. If

conditions demand an immediate citation in addition to the opportunity to cure less serious violations, the County should have the latitude to pursue that course, as the legislation currently provides.

Sec. 8-23 - Appeals. Stripping away the right to appeal "any other decision or order of the Department" will give DPS carte blance to conduct its activities with impunity. Many DPS actions do not involve permits and may have a significant effect on the rights of persons other than permit holders.

Determining what constitutes a final, appealable action by a County agency is frequently a threshold question in the Board's administrative appeal cases. Retaining an avenue for such analysis within the County's administrative mechanism is essential to what should be an ongoing effort to clarify the County's regulations and requirements. Simply making DPS and other County agencies immune to review will have the opposite effect.

Accordingly, the language inserted in paragraph 8-23(a) addressing the issuance or non-issuance of stop work orders is anomalously specific. Now that *Longo* has been decided at the appellate level, this new sentence should be deleted as contrary to state law.

Sec. 22-14. National standards. By removing the listing of applicable NFPA sections from the County Code, the proposed legislation makes it much more difficult for code users to ascertain what National Codes have been adopted by the County. Requiring that the "Fire Chief recommend that the Executive adopt regulation" sets out an open-ended, undefined process but does not give meaningful guidance to code users, including County personnel charged with interpreting and enforcing the Fire Code. This provision merits greater examination if it is to be revised.

Deletion of Secs. 22-21, 22-27. In practice, I can recall only one appeal to an action of the Fire Chief while I was on the Board of Appeals, and it lingered in discussion between the County and petitioner for some time before finally being dismissed. However, depriving the public of any remedy is unjust. Whether through the Board of Appeals or the Courts, some mechanism for challenging County decisions must be retained.

Thank you for the opportunity to comment on the pending legislation. In general, the nascent concepts reflected in Bill 09-22 and related legislation strongly suggest that a more comprehensive evaluation of the interplay between planning and implementation in the County is necessary.

Sincerely,

Allison I. Fultz