

MEMORANDUM

April 27, 2010

TO: Planning, Housing, and Economic Development Committee  
FROM: Amanda Mihill, Legislative Analyst *A. Mihill*  
SUBJECT: **Worksession: FY11 Operating Budget**  
**Office of Zoning and Administrative Hearings**

*Those expected for this worksession:*

- Francoise Carrier, Hearing Examiner
- John Cuff, Office of Management and Budget

The Executive's recommendation for the Office of Zoning and Administrative Hearings (OZAH) is attached at ©1-2.

**Overview**

For FY11, the Executive recommends total expenditures of \$497,590 for OZAH, a 5.1% decrease from the FY10 approved budget of \$524,440.

(in \$000's)	FY09 Actual	FY10 Approved	FY11 CE Recommended	% Change FY10-FY11
<b>Expenditures:</b>				
General Fund	\$490,754	\$524,440	\$497,590	-5.1%
Grant Fund	\$0	\$0	\$0	0.0%
<b>TOTAL Expenditures</b>	<b>\$490,754</b>	<b>\$524,440</b>	<b>\$497,590</b>	<b>-5.1%</b>
<b>Positions:</b>				
Full-time	3	3	3	0.0%
Part-time	1	1	1	0.0%
<b>TOTAL Positions</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>0.0%</b>
<b>WORKYEARS</b>	<b>3.8</b>	<b>3.8</b>	<b>3.7</b>	<b>-2.6%</b>

The FY11 Executive recommendation is a decrease of \$24,850 from the FY10 approved budget from the following identified same services adjustments:

<b>Identified Same Services Adjustments:</b>	
Group Insurance Adjustments	\$1,010
Reduce Office Supplies	-\$500
Printing and Mail Cost Adjustments	-\$610
Decrease Reference Materials	-\$1,000
Reduce Books and Reference Materials	-\$2,000
Annualization of FY10 Personnel Costs	-\$2,230
Retirement Adjustment	-\$3,880
Furlough Days	-\$15,640
<b>NET SAME SERVICES ADJUSTMENT TOTAL</b>	<b>-\$24,850</b>

### **Public Hearing Testimony**

The Council has not received any testimony regarding OZAH's budget.

### **FY11 Expenditure Issues**

#### **1. Reduce: Preparation of Transcripts (-\$2,000)**

Although the crosswalk in the FY11 recommended budget indicates that a reduction in transcript preparation is a change with a service impact, the Hearing Examiner indicates that this reduction would only have a service impact if the Council directs the Office to cancel cases if the Office goes over budget. Should the Hearing Examiner have more hearing days than what the budget covers, the Office would require either a supplemental appropriation or end-of-year transfer to cover the cost to prepare transcripts.

#### **2. Proposed increase for contract hearing examiner – FCC Ruling (\$40,000) (©5-6)**

The Hearing Examiner is requesting an additional \$40,000 for contract hearing examiners to implement a recent Federal Communications Commission decision. In November 2009, the FCC ruled that jurisdictions must process collocation applications for telecommunication facilities within 90 days and all other tower siting applications within 150 days. The Board and Hearing Examiner note that this timeframe will impose significant scheduling constraints on the Hearing Examiner and will require that the Hearing Examiner postpone a previously scheduled hearing in another case or assign the tower case to a contract hearing examiner. The Hearing Examiner notes that it would be unfair to postpone a previously scheduled hearing to accelerate tower cases. Therefore, the Board and the Hearing Examiner propose to increase the filing fee for telecommunications facilities by \$5,000. This would bring the total fee to \$18,750. Under this proposal, the increase would be used by the Hearing Examiner to use contract hearing examiners and the Hearing Examiner could spend no more money on contract examiners than the Board collects in revenue. The net impact would therefore be fiscally neutral.

**Council staff recommendation:** add \$40,000 to the reconciliation list to fund additional contract hearing examiners, to be offset by the amount of revenue BOA collects for tower siting applications.

### **3. Proposed transfer from FY10 for contract hearing examiners (\$7,000) (©4-5)**

The FY11 recommended budget allocates \$15,000 for contract hearing examiners. The Office has about \$7,000 in unspent funds for contract hearing examiners in the FY10 budget and is requesting that this \$7,000 be transferred to FY11, resulting in an allocation of \$21,000 for contract hearing examiners. The Hearing Examiner is requesting this transfer because the Director assigned a human rights case to a contractor, hoping that the case would be heard during FY10 and the report submitted in early FY11, so the cost would be split over two fiscal years. The hearing has been delayed, and is now scheduled for July 2010, so the bulk of the cost will be incurred in FY11. If the Council does not concur with this request, the Hearing Examiner will reassign the case to an employee hearing examiner, which the Hearing Examiner reports would result in the inefficiencies of a new hearing examiner having to get up to date on the case and could result in postponing the discrimination case or another case.

**Council staff recommendation:** Council staff believes that this is a legitimate request. However, given the fiscal situation the Committee may wish to retain any funds not used in FY10 in the General Fund to aid the budget shortfall.

### **4. Potential reduction related to the budget for the Office of the People's Counsel.**

The Committee will be discussing the budget for the Office of the People's Counsel. In the packet for that item, Council staff has identified several options to reduce expenditures. If the Committee selects any of the options that abolish the Executive Administrative Aide position in that Office, the Board of Appeals will lose an additional 0.25 workyears in administrative support, for a total reduction of 1.25 workyears in administrative support. One option to address this situation would be to shift some amount of time (0.25-0.5 workyears) for the Office Services Coordinator position in OZAH to the Board of Appeals.

### **FY11 Revenue Issues**

OZAH collects revenues for three types of applications: (1) local map amendments; (2) development plan amendments; and (3) certain special exceptions. The Office also conducts hearings on special exceptions filed with the Board of Appeals and referrals from the Human Rights Commission but does not receive revenue from those agencies. OZAH's filing fees were last increased on June 19, 2007.

The Executive's recommended budget projects that OZAH will collect \$100,000 in hearing fees in FY11. Fees vary widely depending on how many cases are filed in a given year, what zones the applicant seeks, and how much land is involved. The percentage of OZAH expenditures covered by fees in FY09 was 37.4%. The percentage of Board expenditures covered by fees in FY11 is projected to be 15.1%.

Given the County's current fiscal situation, the Hearing Examiner recommends an approximate 10% fee increase to each fee, except the following:

- provide no increase for the \$60 fee for renewal of temporary exceptions because of the minor administrative expenses associated with the renewals;
- increase the sign fee from \$150 to \$300 (and increase the refund for returned sign from \$100 to \$250) to more closely match the cost of the sign and encourage applicants to return the sign after the case is complete; and
- increase the fee for home occupations from \$350 to \$550 to mirror the current Board of Appeals' fee for the same use.

**Council staff recommendation:** increase the Hearing Examiner fees as proposed.

### **Council Staff Recommendation**

Council staff recommends approval of the FY11 budget as submitted by the Executive with the following changes:

- add \$40,000 to fund additional contract hearing examiners, to be offset by the amount of revenue BOA collects for tower siting applications; and
- increase the fees as proposed by the Hearing Examiner.

If the Committee supports reducing the Office of People's Counsel personnel, shift 0.25-0.5 workyears for the Office Services Coordinator position in the Office of Zoning and Administrative Hearings to the Board of Appeals staff.

#### This packet contains

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# Zoning and Administrative Hearings

## MISSION STATEMENT

The mission of the Office of Zoning and Administrative Hearings is to provide a hearing process for land use and other administrative matters that protects the due process rights of the participants as well as the public interest.

## BUDGET OVERVIEW

The total recommended FY11 Operating Budget for the Office of Zoning and Administrative Hearings is \$497,590, a decrease of \$26,850 or 5.1 percent from the FY10 Approved Budget of \$524,440. Personnel Costs comprise 87.5 percent of the budget for three full-time positions and one part-time position for 3.7 workyears. Operating Expenses account for the remaining 12.5 percent of the FY11 budget.

## LINKAGE TO COUNTY RESULT AREAS

While this program area supports all eight of the County Result Areas, the following are emphasized:

❖ **A Responsive, Accountable County Government**

## DEPARTMENT PERFORMANCE MEASURES

Performance measures for this department are included below. The FY10 estimates incorporate the effect of the FY10 savings plan. The FY11 and FY12 targets assume the recommended FY11 budget and FY12 funding for comparable service levels.

Measure	Actual FY08	Actual FY09	Estimated FY10	Target FY11	Target FY12
<b>Program Measures</b>					
Average time from filing a case until hearing is held (months)	4.5	4.5	4.5	4.5	4.5
Number of Hearing Examiner decisions overturned on appeal	0	0	0	0	0
Percentage of all legal deadlines and requirements met	100	100	100	100	100
Percentage of Hearing Examiner recommendations accepted by County Council, Board of Appeals, and Human Rights Commission	96	96	96	96	96
Total cases completed	50	46	50	50	50

## PROGRAM CONTACTS

Contact Francoise Carrier of the Office of Zoning and Administrative Hearings at 240.777.6660 or John Cuff of the Office of Management and Budget at 240.777.2762 for more information regarding this department's operating budget.

## PROGRAM DESCRIPTIONS

### **Zoning and Administrative Hearings**

The Hearing Examiner receives applications for certain zoning matters decided by the County Council; schedules and conducts public hearings; prepares and issues reports and recommendations for County Council action; hears and decides certain special exception cases; schedules and conducts referral hearings from other departments; maintains administrative records for public inspection; collects fees; responds to public inquiries; and works with other County agencies in the preparation, revision, and review of procedural rules, fee schedules, and zoning text amendments. Administrative support involves preparing advertising and other forms of notice; providing court reporter services; printing and mailing; and general office services.

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## BUDGET SUMMARY

	Actual FY09	Budget FY10	Estimated FY10	Recommended FY11	% Chg Bud/Rec
<b>COUNTY GENERAL FUND</b>					
<b>EXPENDITURES</b>					
Salaries and Wages	374,173	385,650	368,950	360,710	-6.5%
Employee Benefits	66,638	70,400	60,600	74,600	6.0%
<b>County General Fund Personnel Costs</b>	<b>440,811</b>	<b>456,050</b>	<b>429,550</b>	<b>435,310</b>	<b>-4.5%</b>
Operating Expenses	49,943	68,390	90,390	62,280	-8.9%
Capital Outlay	0	0	0	0	—
<b>County General Fund Expenditures</b>	<b>490,754</b>	<b>524,440</b>	<b>519,940</b>	<b>497,590</b>	<b>-5.1%</b>
<b>PERSONNEL</b>					
Full-Time	3	3	3	3	—
Part-Time	1	1	1	1	—
Workyears	3.8	3.8	3.8	3.7	-2.6%
<b>REVENUES</b>					
Zoning and Administrative Hearing Fees - MNCPPC	0	-25,000	-25,000	-25,000	—
Zoning and Administrative Hearing Fees	183,922	100,000	100,000	100,000	—
<b>County General Fund Revenues</b>	<b>183,922</b>	<b>75,000</b>	<b>75,000</b>	<b>75,000</b>	<b>—</b>

## FY11 RECOMMENDED CHANGES

	Expenditures	WYs
<b>COUNTY GENERAL FUND</b>		
<b>FY10 ORIGINAL APPROPRIATION</b>	<b>524,440</b>	<b>3.8</b>
<b>Changes (with service impacts)</b>		
Reduce: Preparation of Transcripts	-2,000	0.0
<b>Other Adjustments (with no service impacts)</b>		
Increase Cost: Group Insurance Adjustment	1,010	0.0
Decrease Cost: Reduce Office Supplies	-500	0.0
Decrease Cost: Printing and Mail Adjustment	-610	0.0
Decrease Cost: Decrease Reference Materials	-1,000	0.0
Decrease Cost: Reduce Books and Reference Materials	-2,000	0.0
Decrease Cost: Annualization of FY10 Personnel Costs	-2,230	0.0
Decrease Cost: Retirement Adjustment	-3,880	0.0
Decrease Cost: Furlough Days	-15,640	-0.1
<b>FY11 RECOMMENDED:</b>	<b>497,590</b>	<b>3.7</b>

## FUTURE FISCAL IMPACTS

Title	CE REC.					
	FY11	FY12	FY13	FY14	FY15	FY16
(\$000's)						
This table is intended to present significant future fiscal impacts of the department's programs.						
<b>COUNTY GENERAL FUND</b>						
<b>Expenditures</b>						
FY11 Recommended	498	498	498	498	498	498
No inflation or compensation change is included in outyear projections.						
Restore Personnel Costs	0	16	16	16	16	16
This represents restoration of funding to remove FY11 furloughs.						
<b>Subtotal Expenditures</b>	<b>498</b>	<b>513</b>	<b>513</b>	<b>513</b>	<b>513</b>	<b>513</b>

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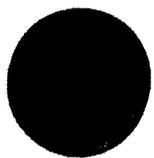
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MONTGOMERY COUNTY, MARYLAND



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RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

MEMORANDUM

April 6, 2010

TO: County Council

FROM: Françoise M. Carrier *FMC*  
Director, Office of Zoning and Administrative Hearings

SUBJECT: Fee Increase and Request to Increase Contract Hearing Examiner Budget for FY2011

Fee Increase

The Office of Zoning and Administrative Hearings collects fees in connection with Local Map Amendment and Development Plan Amendment applications, as well as a small number of special exceptions. Our fee schedule was last revised in September 2007. In light of the County's current budget issues and normal increases in personnel and other costs, I recommend an increase in fees at this time. The attached schedule reflects increases of approximately ten percent to each fee, rounded off to simplify fee calculations. I departed from the ten-percent increase in three cases: (1) I propose no increase in the modest \$60 fee for renewal of temporary special exceptions, in light of the minor administrative expenses associated with these renewals; (2) I propose a significant increase in the sign fee with a larger refund for returning a sign, to more closely match the cost of the signs and to provide a greater incentive to return a sign after the case is completed; and (3) I propose a significant increase in the fee for home occupations (which may be filed at OZAH only in three zones) to match the Board of Appeals' fee for the same use.

I also propose a new category of fees, for modifications to existing special exceptions. We receive a request to modify a child day care special exception from time to time, typically to increase the number of children permitted. In one case, the holder of a child day care special exception requested three modifications in the course of one calendar year. It seems appropriate to charge a reasonable fee for such requests, to cover some of the cost of the hearing examiner time and staff time devoted to processing the request. The attached fee schedule proposes a fee structure similar to the modification fees that the Board of Appeals charges in its cases.

Contract Hearing Examiner Budget: Part 1, Request to Transfer Funds from FY2010

OZAH's FY2011 budget submission included a budget item in the amount of \$15,000 for contract hearing examiners. This amount is equal to the sum left in this budget category for the current fiscal year after an FY2010 Savings Plan reduction.

During FY2010 I assigned to contract hearing examiner Lutz Prager a discrimination case referred to OZAH by the Office of Human Rights. It is a complex dispute over alleged employment discrimination under the Americans with Disabilities Act, made more difficult by the fact that the claimant is proceeding *pro se*. It was my hope that the case would be heard towards the end of FY2010, and that most of the report would be written during FY2011, allowing the hearing examiner charges to be spread over two fiscal years. Unfortunately the hearing was postponed more than once due to discovery disputes, and is now scheduled for July 2010. I am not confident that the funds in OZAH's FY2011 budget proposal for contract hearing examiners will be enough for Mr. Prager to conduct the hearing (anticipated to run as long as four days) and write the report. Transferring the case to either me or my colleague Marty Grossman would result in the inefficiency of a new hearing examiner having to get up to speed on what Mr. Prager has done procedurally during the last few months, as well as with the facts and relevant law that Mr. Prager has been working with for some

time. It would undoubtedly take either Mr. Grossman or me longer to handle the case than it would take Mr. Prager. Reassigning the case would likely lead to postponing either that case or another from our July docket to September, because the current hearing schedule was designed for three hearing examiners, not two. Of course, if an employee hearing examiner hears the case, there will be no additional cash outlay for the County.

I expect that at the close of the current fiscal year, OZAH will have approximately \$7,000 unspent from the contract hearing examiner allocation in its FY2010 budget. I request to transfer those funds to FY2011 by increasing the requested FY2011 allocation for contract hearing examiners to \$21,000. I expect that amount would be sufficient to allow Mr. Prager to handle the discrimination case he began some months ago.

Contract Hearing Examiner Budget: Part 2, Response to FCC Shot Clock Ruling

Last October, the Federal Communications Commission issued a ruling that requires local governments to decide siting applications for cell phone towers in no more than 150 days. Based on advice from the County Attorney's office, OZAH and the Board of Appeals interpret this ruling to mean that the County must fit the Transmission Facility Coordinating Group Recommendation and the BOA decision on a cell tower special exception into a 150-day time frame. Currently, the TCFG/BOA processes for a cell tower together take over 200 days. Reducing that timeframe to 150 days will require coordinated effort among the TFCG, the BOA, OZAH and Park & Planning. The four agencies have each agreed to move more quickly on these cases. For OZAH, that includes scheduling cell tower hearings within 90 days of when an application is accepted as complete – far sooner than the typical 130 to 150 days between filing and hearing. Depending on how many cell tower applications are filed in a given month and how busy our calendar is, this may present us with a choice: postpone a previously scheduled hearing in another case to make room for the cell tower case, or assign the cell

tower case to a contract hearing examiner. T-Mobile recently obtained favorable recommendations from the TCFG for ten cell towers that will require special exceptions, and its counsel has informed us that the special exception applications will be filed within the next few months. Thus, we anticipate an unusually large number of cell tower applications during FY2010 and into FY2011.

The relevant agencies all agree that it would be unfair to postpone previously scheduled non-cell tower hearings to accelerate cell tower cases. To avoid that outcome, OZAH would need the flexibility to assign cell tower cases to a contract hearing examiner. OZAH and the Board of Appeals propose a two-part method to fund the cost of contract hearing examiners for cell tower cases without spending any additional County funds. The Board of Appeals proposes to increase the filing fee for a cell tower special exception application by \$5,000. OZAH requests to increase its budget item for contract hearing examiners by \$40,000, with a commitment to spend no more on contract hearing examiners for cell tower cases than the additional revenue the Board of Appeals collects from the proposed cell tower fee increase. Thus, if the Board of Appeals receives six cell tower special exception applications during a fiscal year, OZAH must spend no more than \$30,000 on contract hearing examiners for cell tower cases while those six cases are pending. I estimate that \$40,000 would be enough funds to cover approximately ten cell tower cases, which is more than we have ever received in a single fiscal year, but matches the number of applications we expect to receive from T-Mobile in the next few months.

Attached to this memorandum are (1) a proposed fee schedule revision for LMA and DPA cases; (2) a proposed fee schedule revision for special exceptions filed with OZAH; and (3) a draft resolution approving the proposed fee schedule revisions. I appreciate your consideration of these requests, and will be happy to answer any questions you may have.

cc: Amanda Mihill

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**Local Map Amendment/Development Plan Amendment Fee Schedule**

**SUGGESTED REVISIONS**

Proposed to take effect July 1, 2010

<b>Zone Classification</b>	<b>Basic Fee for Designated Acreage or Less</b>	<b>Suggested Revised Fee</b>	<b>Additional Fee Per Acre Above Designated Acreage</b>	<b>Suggested Revised Fee</b>
<b><u>Residential, One-Family Zones</u></b>				
Rural Density Transfer (25 acres)	\$650	\$725	\$150	\$175
Rural (5 acres)	650	725	150	175
Rural Cluster (5 acres)	725	800	200	225
Rural Neighborhood Cluster (5 acres)	925	1,000	200	225
Rural Service (2 acres)	1,450	1,600	350	400
Low Density Rural Cluster Dev. Zone (5 acres)	800	900	200	225
Low-density Resid. & TDR (1 acre)				
- RE-2, RE-2C and RE-1	2,300	2,500	400	450
- R-200, RMH-200 and R-150	3,550	3,900	400	450
Medium-density Resid. & TDR (1 acre)				
- R-90, R-60 and R-40	4,600	5,000	400	450
Fourplex (1 acre)	5,500	6,000	400	450
R-T (1 acre)	5,500	6,000	400	450
<b><u>Residential, Multi-Family and Mobile Home Zones</u></b>				
R-30, R-20, R-10 and R-H (1 acre)	5,500	6,000	450	500
R-MH-Mobile Home Dev. (15 acres)	9,200	10,000	425	475
<b><u>Planned Development Zone</u></b>				
P-D (2 acres)	10,000	11,000	600	650
MXPD (20 acres)	16,500	18,150	600	650
MXN (20 acres)	16,500	18,150	600	650
Planned Neighborhood (50 acres)	24,000	26,500	600	650
P-R-C (25 acres)	20,000	22,000	600	650
Town Sector (50 acres)	24,000	26,500	600	650
Planned Cultural Center (5 acres)	8,000	8,800	600	650
<b><u>RMX-Zones</u></b>				
RMX-1 and RMX-1/TDR (1 acre)	6,000	6,600	525	575
RMX-2, RMX-2/TDR & RMX-2C (1 acre)	7,500	8,200	600	650
RMX-3, RMX-3/TDR & RMX-3C (1 acre)	8,600	9,500	700	775
<b><u>Commercial Zones</u></b>				
C-1, C-2, C-O, C-T, O-M, C-3, C-5, C-4 (1 ac)	6,600	7,200	600	650
C-T, O-M, C-3 and C-5 (1 acre)	6,600	7,200	600	650
C-6 (40 acres)	9,000	10,000	600	650
Country Inn (2 acres)	6,000	6,600	600	650
Hotel-Motel (2 acres)	8,000	8,800	600	650
C-P (5 acres)	\$ 8,500	\$ 9,350	\$ 600	\$ 650

**Local Map Amendment/Development Plan Amendment Fee Schedule**

**SUGGESTED REVISIONS (cont.)**

Proposed to take effect July 1, 2010

<b>Zone Classification</b>	<b>Basic Fee for Designated Acreage or Less</b>	<b>Suggested Revised Fee</b>	<b>Additional Fee Per Acre Above Designated Acreage</b>	<b>Suggested Revised Fee</b>
<b><u>Industrial Zones</u></b>				
I-1 and I-2 (1 acre)	\$ 6,600	\$ 7,200	\$ 600	\$ 650
I-3 (2 acres)	8,000	8,800	700	775
I-4 (2 acres)	8,000	8,800	700	775
Mineral Resource Recovery Zone (10 acres)	16,500	16,500	700	775
Research & Development Zone (2 acres)	14,500	14,500	700	775
Life Sciences Center	16,500	18,150	800	875
<b><u>Central Business District Zone</u></b>				
CBD-1, CBD-R1, CBD-R2 and CBD-0.5 (1 acre)	6,600	7,200	600	650
CBD-2 and CBD-3 (1 acre)	8,000	8,800	700	775
<b><u>Transit Station Zones</u></b>				
TS-M and TS-R (1 acre)	8,500	9,350	\$ 675	\$ 750
<b><u>Optional Method of Application (Schematic Development Plan)</u></b>				
Supplemental initial filing fee	3,250	3,600		
<b><u>Amendment to Approved SDP</u></b>				
Fee for each initial amendment request following Council approval of prior plan	3,400	3,800		
<b><u>Amendment to Approved Dev. Plan</u></b>				
Fee for each initial amendment request following Council approval of prior plan	3,400	3,800		
Supplemental fee if public hearing is conducted	3,500	3,850		
<b><u>Subsequent Amendments to Pending SDP and DP Amendments</u></b>				
For each revision to a SDP or DP amendment while the amendment is still pending County Council approval, except revisions filed explicitly at the request of Technical Staff, Planning Board or Hearing Examiner				
Filing fee	1,750	1,925		
<b>Sign(s) to post on property</b> Currently, \$100 is refunded if sign is returned in usable condition. With fee increase, \$250 will be refunded if sign is returned in usable condition.	\$150	\$300		

**No filing fee shall exceed \$100,000 for any one application.**

Office of Zoning and Administrative Hearings Special Exception Filing Fee Schedule

**SUGGESTED REVISIONS**

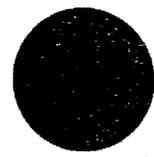
Proposed to take effect July 1, 2010

Special Exception Use	Current Fee	Suggested Revised Fee
Boarding house (R-30, R-20, & R-10 zones)	\$650	\$725
Home occupations (R-30, R-20 & R-10 zones)	350	550
Riding Stables, non-commercial (RE-2 zone)	425	475
Temporary Structures (all residential zones)	425	475
Farm Tenant mobile homes	825	900
Group Day Care Home, 9-12 children	400	450
Child Day Care Center, 13-30 children	1,000	1,100
<b>Renewal of Temporary Special Exceptions</b> (major home occupations)	60	60
<b>Modification of existing Special Exception without Public Hearing</b>	None	<i>10% of prevailing SE fee with minimum of \$50</i>
<b>Modification of existing Special Exception with Public Hearing</b>		
No new construction proposed	None	<i>25% of prevailing SE fee</i>
New construction proposed	None	<i>50% of prevailing SE fee</i>
<b>Sign to be posted on property</b> Currently, \$100 is refunded if sign is returned in usable condition. With fee increase, \$250 will be refunded if sign is returned in usable condition.	\$150	\$300

ZTA 10-05



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RECEIVED  
MONTGOMERY COUNTY  
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BOARD OF APPEALS

March 31, 2010

MEMORANDUM

*cgf*

FROM: Catherine Titus, Chair, Board of Appeals  
TO: Nancy Floreen, Council President  
SUBJECT: Proposed Fee Increase

As the Council is aware, on November 18, 2009, the Federal Communications Commission adopted a Declaratory Ruling which establishes timeframes, informally known as a "shot-clock", for state and local governments to process land use applications for telecommunication facilities. Specifically, the ruling requires jurisdictions to process collocation applications within 90 days and all other tower siting applications within 150 days. In Montgomery County, this timeframe will have particular impact on applications which require a special exception. Such applications are reviewed by the Telecommunication Transmission Facility Coordinating Committee (the Tower Committee), by Montgomery County Planning staff and the Planning Board, and by a Hearing Examiner in the Office of Zoning and Administrative Hearings (OZAH), which conducts the evidentiary hearings on the special exceptions prior to final decision by the Board of Appeals.

The shot clock will impose significant scheduling constraints on OZAH's calendar for all special exception hearings, and compliance with the 150 day timeframe may require re-scheduling of other, previously scheduled cases. In anticipation of this impact the Board and OZAH propose an increase of \$5000 in the filing fee for this use, bringing the fee to \$18,750. This amount is estimated to cover the cost of approximately 40 hours of contract hearing examiner time per application, to accelerate telecommunications special exception applications while minimizing the postponement of other hearings. In the last 5 years, there have been 10 applications for special exceptions for telecommunications facilities. However, as applications are accepted on a 'walk-in' basis it is difficult to anticipate their number with certainty. In fact, anecdotal information from industry representatives suggests that a large number may be filed this year. Moreover, the County's Tower Coordinator has informed OZAH that three filings requiring a special exception were recently completed, suggesting that applications with the Board of Appeals will soon follow.

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Resolution No: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**DRAFT**

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

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By: County Council

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**SUBJECT:** Fee Increase for Special Exception Applications for Telecommunication Facilities

**Background**

On November 18, 2009 the Federal Communications Commission adopted a Declaratory Ruling which establishes timeframes, informally known as a “shot-clock”, for state and local governments to process land use applications for telecommunication facilities. Specifically, the ruling requires jurisdictions to process collocation applications within 90 days and all other tower siting applications within 150 days. In Montgomery County, this timeframe will have particular impact on applications which require a special exception.

Compliance with the 150 day timeframe may require re-scheduling of other, previously scheduled cases. An increase of \$5000 in the filing fee for this use, bringing the fee to \$18,750 is estimated to cover the cost of approximately 40 hours of contract hearing examiner time per application, to accelerate telecommunications special exception applications while minimizing the postponement of other hearings.

**Action**

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

The attached fee schedule is established for filing a special exception for a Telecommunication Facility with the Board of Appeals.

Attachment to Resolution No.:

**SECTION OF**  
**THE ZONING**

**ORDINANCE SPECIAL EXCEPTION USE**

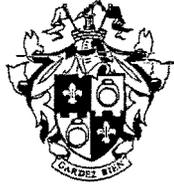
**Old Fee**

**New Fee**

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59-G-2.58	Telecommunication Facility	\$13,750.	\$18,750.
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REPORT



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MONTGOMERY COUNTY, MARYLAND

MEMORANDUM



September 24, 2009

2009 SEP 29 AM 9:07

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

TO: Phil Andrews, President  
Montgomery County Council

FROM: Françoise M. Carrier, Director  
Office of Zoning and Administrative Hearings

SUBJECT: Annual report for FY 09 ended June 30, 2009

The Office of Zoning and Administrative Hearings (OZAH) completed a total of 41 cases during Fiscal 2009, as follows:

- Cases decided by the District Council: 8<sup>1</sup>
- Special exceptions decided by the Hearing Examiner: 8<sup>2</sup>
- Board of Appeals cases: 25
- Referrals from the Human Rights Commission: 0

The number of cases decided by the District Council decreased slightly in the last year, from 14 cases in FY08 to 8 in FY09. This is consistent with continued general weakness in the local real estate market. OZAH completed 25 Board of Appeals ("BOA") special exceptions in FY 09, a slight decrease from 28 in FY08. This reflects decreased special exception filings. No Human Rights Commission cases were completed during FY09, although a hearing was completed in one case and the report is in preparation.

We continue to experience a significant number of hearing postponements. Inevitably, some cases are postponed at the request of applicants who are not ready to go forward, and some at the request of opposition parties who need more time to prepare for a hearing. Some cases are postponed because Technical Staff determines that the application materials submitted are not adequate, requiring a new hearing date after new submissions are made. We continue to schedule special exception hearings no sooner than 4 ½ months after their filing date (3 ½ months for accessory apartments), per Park & Planning's request. Hearing dates for zoning cases are set after consultation with Park & Planning. We find that Park & Planning generally requires no less than five months between filing and the original hearing date for a zoning case.

A year ago I reported that the Development Review Division at Park and Planning (which is responsible for reports on all of OZAH's cases) had submitted to the Planning Board a zoning text amendment to establish a new procedure for the filing of special exception applications. I was

<sup>1</sup> Including one development plan amendment that was processed without a hearing  
<sup>2</sup> Including two modifications and four revocations that were handled administratively without a hearing.



hopeful that this initiative would speed up the review process, but the Planning Board has chosen not to act on it.

OZAH continues to enjoy a high rate of recommendations accepted by the District Council and BOA. The District Council accepted the hearing examiner's recommendation in 6 out of 8 cases where a hearing examiner recommendation was made and final Council action was taken in FY 09. The BOA accepted the hearing examiner's recommendation in all of the special exceptions decided in FY 09, although in some cases the BOA revised some of the conditions recommended by the hearing examiner.

A chart of workload indicators for the past five years is depicted below. We spent only 25% of our budgeted amount for contract hearing examiners, finding that we were able to handle most of the caseload internally.

	FY 05	FY 06	FY 07	FY 08	FY 09
Staffing	1.75 HE + Contractors				
Completed Cases	69	54	73	56	46
Expenditures	\$404,700	\$452,702	\$442,145	\$478,042	\$484,754
Cost per case	\$5,865	\$8,383	\$6,056	\$8,536	\$10,538

As an indicator of ongoing workload levels, the table below summarizes cases pending as of the close of FY 2008 and FY 2009.

	As of 6-30-08	As of 6-30-09
Cases decided by the District Council	18	17
Special exceptions decided by Hearing Examiner	1	1
Referrals: Board of Appeals	26	21
Human Rights Commission	2	6
Total	45	45

Despite the drop in the number of cases completed in Fiscal 2009, the Hearing Examiners have been fully occupied with a series of very complicated cases. These included a pending special exception modification request for Suburban Hospital that required 35 hearing days; three contested rezoning cases; a combined special exception modification/variance request for Holy Cross Hospital that had two hearing days and raised novel issues; a special exception modification request for the German School, a private educational institution, which engendered significant opposition, required several hearing days and raised complex issues; and a development plan amendment case with active opposition and unusual historic preservation issues.

The hearing examiner staff was unchanged in FY09, consisting of myself (three-quarter time), Martin Grossman (full time) and two contractors: Phil Tierney and Lutz Prager. Contracts with Messrs. Tierney and Prager are being renewed, and both continue to provide services to OZAH. Our administrative staffing is unchanged, and we have been fortunate to have extremely competent, hard-working individuals in both positions. Our senior administrative staff member has notified me that she intends to resign her post in the coming months, so I am seeking an exemption from the hiring freeze to replace her, and hope to begin the recruitment process shortly.

The office collected \$178,690 in fees for FY09. This represents a substantial increase compared to FY08, when OZAH had a 30 percent drop in filings and a series of cases covering small land areas. The number of filings continued to be small in FY09, but included one case covering a

large land area, which generated the maximum application fee of \$100,000. Typically, we are seeing mostly infill development applications, which are often contested and complicated, but generate fairly low fees because of the small land areas involved.

**Revenues from Fees**

FY 09	\$178,690
FY 08	\$ 80,926
FY 07	\$147,925
FY 06	\$110,965
FY 05	\$127,445

In sum, OZAH continues to successfully manage its workload with the current funding, and expects to be able to do so in the current fiscal year. Should you have any questions, please do not hesitate to contact me.

cc: Martin Grossman  
Jeff Zyontz, Legislative Attorney  
John Cuff, Office of Management & Budget  
Shondell Foster, Legislative Analyst