

MEMORANDUM

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney
Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 34-09, Forest conservation - Enforcement

Bill 34-09, Forest conservation - Enforcement, sponsored by the Council President at the request of the Planning Board, is scheduled to be introduced on October 6, 2009. A public hearing is tentatively scheduled for November 17 at 7:30 p.m.

Bill 34-09 would amend the forest conservation law to modify the number of required inspections and the notification period for inspections. This bill would also specify the penalty procedures and modify the hearing procedures for violations of the forest conservation law.

This packet contains:	<u>Circle #</u>
Bill 34-09	1
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Bill No. 34-09
Concerning: Forest Conservation – Enforcement
Revised: 10-01-09 Draft No. 1
introduced: October 6, 2009
Expires: April 6, 2011
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: None
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the Planning Board

AN ACT to:

- (1) Amend the forest conservation law to modify the number of required inspections and the notification period for inspections;
- (2) specify the penalty procedures for violations of the forest conservation law;
- (3) modify the hearing procedures for violations of the forest conservation law; and
- (4) generally amend the forest conservation law.

By amending

Montgomery County Code
Chapter 22A, Forest Conservation
Sections 22A-15 through 22A-17 and 22A-19 through 22A-21

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 22A-15 through 22A-17 and 22A-19 through 22A-21 are**
2 **amended as follows:**

3 **22A-15. Inspections and notification.**

4 (a) *Permission to gain access.* [Authorized representatives of]
5 Representatives authorized by the Planning [Department] Director may
6 enter properties subject to this Chapter for the purpose of inspection,
7 review, and enforcement.

8 (b) *Plan to be on site; field markings.* A copy of the approved forest
9 conservation plan must be available on the site for inspection by
10 [authorized] representatives authorized by the Planning Director. Field
11 markings must exist on site before and during installation of all
12 protective devices, construction, or other land disturbing activities.

13 (c) *Required inspections.*

14 (1) The Planning Department [should] must conduct [at least 3] 6
15 field inspections of a [tract subject to an approved forest
16 conservation plan. The inspections should take place as follows:]
17 site.

18 [(1) The first inspection should take place before any land disturbing
19 activities (including clearing, grading, or stripping) occurs on the
20 tract to determine if protective measures have been properly
21 installed and conservation areas clearly marked;

22 (2) The second inspection should take place following completion of
23 all land disturbing activities and afforestation or reforestation to
24 determine the level of compliance with the forest conservation
25 plan; and

26 (3) The third inspection should take place at the end of the
27 maintenance agreement 2-year time period.]

28 (2) The Planning Director must conduct field inspection of a site
 29 subject to an approved forest conservation plan as follows:

30 (A) after the limits of disturbance have been staked and
 31 flagged, but before any clearing or grading begins;

32 (B) after necessary stress reduction measures have been
 33 completed and the protection measures have been
 34 installed, but before any clearing or grading begins;

35 (C) after all construction activities are completed, to determine
 36 the level of compliance with the forest conservation plan;

37 (D) before any required reforestation and afforestation planting
 38 is started;

39 (E) after required reforestation and afforestation have been
 40 completed, to verify the planting is acceptable and begin
 41 the maintenance and management period; and

42 (F) at the end of the maintenance and management period, to
 43 determine the level of compliance with the planting plan
 44 and, if appropriate, authorize release of financial security.

45 (d) *Other inspections.* The Planning [Department] Director may [conduct
 46 other] authorize additional inspections or meetings as necessary to
 47 administer this Chapter[, including an inspection to confirm a forest
 48 stand delineation].

49 (e) [*Required notifications*] Scheduling requirements for forest
 50 conservation and tree save plan inspections. A person must request an
 51 inspection by the Planning Director at least 7 days before the date of the
 52 inspection under subsection (c).

53 [(1) At least 2 working days before starting any land disturbing
 54 activities associated with the forest conservation plan, a person

55 must notify the Planning Department. The Planning Department
 56 must coordinate its inspections, and any pre-construction
 57 conferences, with the Department of Permitting Services to avoid
 58 inconsistent directives in the field relating to the forest
 59 conservation plan and sediment control activities.

60 (2) At least 2 working days before completion of afforestation and
 61 reforestation plantings, a person must notify the Planning
 62 Department so that the Department may schedule the second
 63 inspection specified under paragraph (c)(2) of this Section.]

64 **22A-16. Penalties and other remedies.**

65 (a) *Class A violation.* [Violation] Any violation of this Chapter or any
 66 regulations adopted under it is a Class A civil or criminal violation.
 67 [Notwithstanding Section 1-19, the] The maximum civil fine is \$1,000.
 68 Each day a violation continues [is] may be treated as a separate
 69 violation under this Chapter.

70 (b) *Enforcement authority.* The Maryland-National Capital Park and
 71 Planning Commission has primary enforcement authority under this
 72 Chapter. Administrative enforcement actions [are to] may be initiated
 73 by the Planning Director [in accordance with] under this Article.

74 (c) *Civil and criminal actions.* The Commission may bring any civil or
 75 criminal action authorized by law that the County may bring under
 76 Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation
 77 adopted under it. The Commission may also bring a civil action to
 78 enforce a forest conservation plan and any associated agreements,
 79 easements, and restrictions or to enforce an administrative order. These
 80 remedies are in addition to any remedy that the Commission or County

81 may initiate under state or County law to enforce the terms of a
82 regulatory approval which incorporates a forest conservation plan.

83 (1) Notice of Violation.

84 (A) The Planning Director may issue a notice of violation to a
85 person believed to be in violation of this Chapter. The
86 Planning Director must retain a copy of the notice of
87 violation.

88 (B) A notice of violation issued under this Article must be
89 served on the alleged violator personally, on the violator's
90 agent at the activity site, or by certified mail to the
91 violator's last known address.

92 (C) The notice of violation must contain at least the following
93 information:

94 (i) the name and address of the person charged;

95 (ii) the nature of the violation;

96 (iii) the place where and the approximate date when the
97 violation occurred;

98 (iv) a statement advising the recipient of the corrective
99 or remedial action to be taken, which may include a
100 meeting with Commission staff to develop a
101 compliance plan, and the date by which the
102 corrective or remedial action must be completed;
103 and

104 (v) a statement advising the recipient of the right to a
105 hearing before the Planning Board or the Board's
106 designee.

107 (2) Citation.

108 (A) The Planning Director may issue a citation to a person
109 believed to be in violation of this Chapter. The Planning
110 Director may use any citation consistent with this Section,
111 including the State of Maryland Uniform Civil Citation
112 form. The Planning Director must certify the truth of the
113 allegations in the citation. The Planning Director must
114 retain a copy of the citation.

115 (B) A citation issued under this Article must be served on the
116 alleged violator personally, on the violator's agent at the
117 activity site, or by certified mail to the violator's last
118 known address.

119 (C) The citation must contain at least the following
120 information:

121 (i) the name and address of the person charged;

122 (ii) the nature of the violation;

123 (iii) the place where and the approximate date when the
124 violation occurred;

125 (iv) the amount of the fine assessed;

126 (v) the manner, location, and time in which the fine
127 may be paid, and the party to whom the fine must be
128 paid;

129 (vi) the date by which the fine must be paid; and

130 (vii) a statement advising the recipient of the right to a
131 hearing before the Planning Board or the Board's
132 designee.

133 (3) Notice of Hearing.

- 134 (A) The Planning Director may issue an administrative notice
 135 that notifies an alleged violator of an enforcement hearing
 136 to be held by the Planning Board or the Board's designee
 137 to address the alleged violation.
- 138 (B) A notice of hearing issued under this Article must be
 139 served on the alleged violator personally, on the violator's
 140 agent at the activity site, or by certified mail to the
 141 violator's last known address.
- 142 (C) The notice of hearing must contain at least the following
 143 information:
- 144 (i) the name and address of the person charged;
 145 (ii) the nature of the violation;
 146 (iii) the place where and the approximate date when the
 147 violation occurred; and
 148 (iv) a statement advising the recipient of the date, time,
 149 and location of the hearing.
- 150 (d) *Administrative civil penalty.*
- 151 (1) In addition to any other [remedies provided] remedy under this
 152 Article, a person who violates this Chapter, any regulations
 153 adopted under it, a forest conservation plan, or any associated
 154 agreements or restrictions is liable for an administrative civil
 155 penalty imposed by the Planning Board. This administrative civil
 156 penalty must not exceed the rate set by the County Council by
 157 law or resolution, except as provided in paragraph (3), but must
 158 not be less than the amount specified in Section 5-1608(c) of the
 159 Natural Resources Article of the Maryland Code. Each day a
 160 violation is not corrected is a separate violation.

161 (2) In determining the amount of the administrative civil penalty, or
 162 the extent of an administrative order issued by the Planning
 163 Director under Section 22A-17, the Planning Board or Planning
 164 Director must consider:

165 * * *

166 (4) [The reasons for imposing a civil penalty must be provided in a
 167 written opinion of the Planning Board and included in its
 168 administrative order.] The Planning Board must include the
 169 reasons for imposing an administrative civil penalty in its
 170 resolution adopting the administrative order.

171 * * *

172 **22A-17. Corrective actions.**

173 (a) *Administrative order.* At any time, including during an enforcement
 174 action, the Planning Director may issue an administrative order
 175 requiring the violator to take one or more of the following actions
 176 within a certain time period specified by the Planning Director:

- 177 (1) stop the violation;
- 178 (2) stabilize the site to comply with a reforestation plan;
- 179 (3) stop all work at the site;
- 180 (4) restore or reforest unlawfully cleared areas;
- 181 (5) submit a forest conservation plan for the property;
- 182 (6) place forested or reforested land under long-term protection by a
 183 conservation easement, deed restriction, covenant, or other
 184 appropriate legal instrument; or
- 185 (7) submit a written report or plan concerning the violation.

186 (b) *Effectiveness of order.* An order issued under this Section is effective
 187 according to its terms, when it is served.

188 **22A-19. Noncompliance with exemption conditions.**

- 189 * * *
- 190 (b) *Penalties for noncompliance.* In addition to any other [remedies]
 191 remedy under this Chapter, the Planning Board may require a person in
 192 noncompliance to:
- 193 (1) [meet the forest conservation threshold as would have been
 194 required] prepare, submit, and implement a forest conservation
 195 plan;
- 196 (2) pay an administrative civil penalty under Section 22A-16(d) for
 197 the area of forest cut or cleared under the exemption; or
- 198 (3) both.

199 **22A-20. [Notice, hearings,] Hearings and appeals.**

- 200 * * *
- 201 (b) *Forest conservation plans and variances approved by the Planning*
 202 *Board [or District Council].*
- 203 [(1)] A person aggrieved by the decision of the Planning Board on the
 204 approval, denial, or modification of a forest conservation plan
 205 (including a request for a variance) may [file a judicial] appeal
 206 [of] the final administrative action on the development approval
 207 [in accordance with Subtitle B of] under the Maryland Rules of
 208 Procedure and any other law applicable to the proceeding.
- 209 [(2)] A person aggrieved by the decision of the District Council on the
 210 approval, denial, or modification of a forest conservation plan
 211 (including a request for a variance) proposed in conjunction with
 212 a development plan may file a judicial appeal of the action on the
 213 development plan in accordance with Division 59-H-8.]

- 214 (c) *Forest stand delineations and forest conservation plans approved by the*
 215 *Planning Director.*
- 216 (1) *Appeal to Planning Board.* [Upon receipt of] After the Planning
 217 [Director's] Director issues a written decision on a natural
 218 resource inventory/forest stand delineation or forest conservation
 219 plan, an applicant [has 30 days in which to] may appeal the
 220 decision to the Planning Board within 30 days.
- 221 (2) *Hearing; decision.* The Planning Board must hold a de novo
 222 hearing on the appeal [and inform the applicant in writing of its
 223 decision. The Board must consider the appeal de novo]. The
 224 Board must adopt a written resolution explaining its decision.
 225 For purposes of judicial review, the decision of the Planning
 226 Board [constitutes] is the final agency action.
- 227 (3) *Appeal.* [Upon receipt of] After receiving the Planning Board's
 228 decision, an applicant [has 30 days in which to] may appeal the
 229 decision within 30 days under [in accordance with Subtitle B of]
 230 the Maryland Rules of Procedure.
- 231 (d) *Administrative enforcement actions.*
- 232 (1) *Notice.* A complaint, order, citation, notice of violation, or other
 233 administrative notice issued by the Planning Director under this
 234 Article must be served on the alleged violator personally, on the
 235 violator's agent at the activity site, or by certified mail to the
 236 violator's last known address. The notice must identify the
 237 alleged violator, the location of the violation, and the specific
 238 facts of the violation, and must give the alleged violator the
 239 opportunity [for] to request, within 15 days after receiving the
 240 notice, a hearing before the Planning Board or the Board's

241 designee [within 10 working days of receipt of the notice. If an
242 administrative action under this Article can only be taken by the
243 Board, the notice must state the date on which the action is
244 scheduled to be considered by the Board].

245 (2) *Hearing.*

246 (A) If an alleged violator requests an opportunity for a hearing
247 [is requested], the matter must be expeditiously scheduled
248 on a Planning Board agenda unless the alleged violator
249 consents to a delay. The filing of a request for a hearing
250 does not stay an administrative order to stop work,
251 stabilized a site, or stop a violation.

252 (B) If the Planning Board or the Board's designee elects to
253 hold a hearing on an action under this Article, the Board
254 must issue a notice of the hearing date.

255 (C) The Planning Board may designate a hearing officer,
256 including a Hearing Examiner from the Office of Zoning
257 and Administrative Hearings, to conduct a hearing and
258 submit a report and recommendation on any alleged
259 violation of this Chapter. The hearing officer must submit
260 the required report and recommendation to the Board not
261 later than 60 days after the hearing record closes. The
262 hearing officer may extend the time to file the report by
263 providing notice of the delay to all parties.

264 (3) *Decision.* The Planning Board must inform the alleged violator
265 in writing of its decision on an administrative enforcement action.
266 The Board's decision [constitutes] is the final agency action for
267 all purposes [of judicial review].

268 (4) *Appeal.* [Upon receipt of] After receiving the Planning Board's
 269 decision, an aggrieved person [has 30 days in which to] may
 270 appeal the Board's action [in accordance with Subtitle B of]
 271 within 30 days under the Maryland Rules of Procedure.

272 **22A-21. Variance provisions.**

273 (a) *Written request.* [A person] An Applicant may request in writing a
 274 variance from this Chapter or any regulation adopted under it if the
 275 [person demonstrates] applicant shows that enforcement would result in
 276 unwarranted hardship [to the person]. A request for a variance [waives]
 277 suspends the time requirements in Section 22A-11 until the Planning
 278 Board acts on the request.

279 (b) *Application requirements.* An applicant for a variance must:

- 280 (1) describe the special conditions peculiar to the property which
 281 would cause the unwarranted hardship;
- 282 (2) describe how enforcement of [these rules] this Chapter will
 283 deprive the landowner of rights commonly enjoyed by others in
 284 similar areas;
- 285 (3) verify that State water quality standards will not be violated [or]
 286 and that a measurable degradation in water quality will not occur
 287 as a result of [the] granting [of] the variance; and
- 288 (4) provide any other information appropriate to support the request.

289 (c) *Referral to other agencies.* Before considering a variance, the Planning
 290 Board must [refer] send a copy of each request to the County Arborist,
 291 Planning [Department] Director, and any other appropriate [officials or
 292 agencies] agency for a written recommendation before acting on the
 293 request. [Recommendations must be] If a recommendation on the
 294 variance is not submitted to the Planning Board within 30 days [from

295 the receipt by the official or agency of the request or] after the referral,
296 the recommendation [should] must be presumed to be favorable.

297 (d) *Minimum criteria.* A variance [must not] may only be granted if it meets
298 the criteria in subsection (a). However, a variance must not be granted
299 if granting the request:

300 (1) will confer on the applicant a special privilege that would be
301 denied to other applicants;

302 (2) is based on conditions or circumstances which [are the] result [of
303 the] from actions by the applicant;

304 (3) [arises from] is based on a condition relating to land or building
305 use, either permitted or nonconforming, on a neighboring
306 property; or

307 (4) will violate State water quality standards or cause measurable
308 degradation in water quality.

309 (e) *Approval procedures; Conditions.* The Planning Board[, or the District
310 Council on a development plan,] must [make findings] find that the
311 applicant has met all requirements of this Section before granting a
312 variance. [Appropriate] The Board may impose appropriate conditions
313 [may be imposed] to promote the objectives of this Chapter and protect
314 the public interest.

315 * * *

316 *Approved:*

317

Philip M. Andrews, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Bill 34-09, *Forest Conservation - Enforcement*

DESCRIPTION: Bill 34-09 would amend the forest conservation law to modify the number of required inspections and the notification period for inspections. This bill would also specify the penalty procedures and modify the hearing procedures for violations of the forest conservation law.

PROBLEM: Need for more proactive enforcement of the forest conservation law.

GOALS AND OBJECTIVES: To provide earlier notice of potential violations of the forest conservation law and clarify the procedures to address violations

COORDINATION: Department of Permitting Services; Planning Department

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: To be determined.

PENALTIES: See County Code §22A-16.

LU & ZONING
7/17/09



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

JZ
CC
SBF
LL
MH
SF

July 17, 2009

The Honorable Phil Andrews, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

050600



2009 JUL 21 PM 2:03

Re: Planning Board Recommendation on Transmittal to County Council for Introduction and Review of a comprehensive package of County Code revisions to Chapters 22, 50 and 59 pertaining to Planning Board Enforcement Processes and Actions

Dear Mr. Andrews and Councilmembers:

On July 2, 2009, in an effort to advance the Commission's efforts and ability to enforce violations of its own previously approved actions, the Planning Board recommended that a comprehensive legislative package that includes revisions to the Forest Conservation Law, the Subdivision Regulations, and the Zoning Ordinance, as well as proposed Enforcement Rules for the Planning Board be transmitted to the County Council for introduction and review.

This comprehensive Enforcement Package develops a clear process for enforcement hearings, assures due process to alleged violators, and ensures that the Planning Board has the necessary authority and appropriate means to enforce its own previously approved actions. Furthermore, the processes that will be codified in the law will be substantially similar to the processes under which the Board operates in the approval and defense of its initial actions.

This comprehensive Enforcement Package also addresses difficulties and conflicts in current law that has limited the effectiveness of the Planning Board's enforcement actions. County residents have expressed concerns with the enforcement process and want assurance that violations will be pursued and corrected. This Enforcement Package will provide the Planning Board with the proper tools to efficiently and effectively address violations. Comprehensive legislative changes are essential to ensure that approved plans that the Board granted with public participation and input are upheld.

Included in this package are proposed revisions to Chapter 50, the Subdivision Regulations, Chapter 59, the Zoning Ordinance, and Chapter 22A, the Forest Conservation Law of the County Code as well as an updated version of Enforcement Rules for the Planning Board. Please note that the Planning Board's proposed revision to

The Honorable Phil Andrews
July 17, 2009
Page 2

Section 59-A-1.3 is consistent with the Council Staff's recommended revision to that same section with regard to ZTA 09-03 presented to the PHED Committee at their work session on July 13, 2009. The Planning Board submitted proposed Enforcement Rules to the County Council last year, but they were returned pending the outcome of state legislation to grant limited subpoena power to the Board. The proposed changes to the law and the proposed Enforcement Rules are all interconnected, and if they are implemented together will be the most effective means of addressing the previous difficulties with enforcement.

Members of the Planning Board and staff of the Department of Park and Planning are available to assist the Council in the review of the proposed legislation.

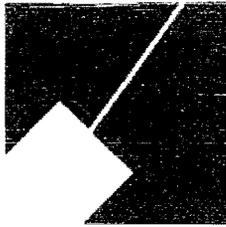
Sincerely,



Royce Hanson
Chairman

RH:gr
Attachments

cc: Planning Board
Rollin Stanley



MEMORANDUM

TO: Montgomery County Planning Board

VIA: Carol Rubin, Associate General Counsel *CR*

FROM: Christina Sorrento, Associate General Counsel *CS*

DATE: June 19, 2009

RE: Legislative Package for Enforcement Program

INTRODUCTION

In an effort to advance the Commission's efforts and ability to enforce violations of its own previously approved actions, the Office of General Counsel has been working with staff on a comprehensive legislative package that includes revisions to the Forest Conservation Law, the Subdivision Regulations, and the Zoning Ordinance, as well as proposed Enforcement Rules for the Planning Board. This comprehensive Enforcement Package develops a clear process for enforcement hearings, assures due process to alleged violators, and ensures that the Planning Board has the necessary authority and appropriate means to enforce its own previously approved actions. Furthermore, the processes that will be codified in the law will be substantially similar to the processes under which the Board operates in the approval and defense of its initial actions.

This comprehensive Enforcement Package also addresses difficulties and conflicts in current law that has limited the effectiveness of the Planning Board's enforcement actions. County residents have expressed concerns with the enforcement process and want assurance that violations will be pursued and corrected. This Enforcement Package will provide the Planning Board with the proper tools to efficiently and effectively address violations. Comprehensive legislative changes are essential to ensure that approved plans that the Board granted with public participation and input are upheld.

Included in this package are proposed revisions to Chapters 50, the Subdivision Regulations (Attachment One), Chapter 59, the Zoning Ordinance (Attachment Two), and Chapter 22A, the Forest Conservation Law (Attachment Three) of the County Code

as well as an updated version of Enforcement Rules for the Planning Board (Attachment Four). The Planning Board submitted proposed Enforcement Rules to the County Council last year, but they were returned pending the outcome of state legislation to grant limited subpoena power to the Board. The proposed changes to the law and the proposed Enforcement Rules are all interconnected, and if they are implemented together will be the most effective means of addressing the previous difficulties with enforcement, including the Board's lack of subpoena power. The purpose of this memorandum is to introduce this Enforcement Package and provide an overview of the changes to the law and the proposed Enforcement Rules.

CHANGES TO THE COUNTY CODE

Section 50-41

Section 50-41 applies to enforcement of all Planning Board Actions, which includes all final decisions made by the Planning Board except decisions made under Chapter 22A. Numerous changes are proposed for this Section to ensure consistency, increase clarity, and provide the necessary structure to enable the Planning Board to penalize violators while also allowing violators due process rights and opportunities to correct the violation prior to an enforcement hearing.

One of the most significant changes in this Section allows for an Administrative Civil Penalty to be assessed at an enforcement hearing, similar to the remedy provided in Chapter 22A for violations of the Forest Conservation Law with established factors for the Planning Board to use in a fair and systematic way when imposing such a penalty.. This change is proposed for many reasons. First, current law is subject to interpretation that limits the Planning Board to a Civil Fine (\$1,000 under the proposed changes per ZTA 09-03 currently before the Council, or \$500 under the existing law), even for significant site plan violations. This Civil Fine is so insignificant that it has become the norm for a violator to ask forgiveness of the Board rather than permission to alter an approved plan. Further, if the violation is too difficult to correct, such as the placement of a building in a location other than as approved, the Planning Board may find it imprudent to order compliance, and the Civil Fine is not enough of a deterrent. The ability for the Planning Board to set an Administrative Civil Penalty in cases such as these is imperative to ensure that Planning Board approvals are upheld and the public can rely on these approvals.

The changes to Section 50-41 restructure appeals of Notices of Violations and Citations to be decided by the Planning Board. The law currently allows Citations to be appealed to District Court. District Court judges are tasked with moving along an overloaded docket, and they rarely have the time or inclination, much less the understanding of the nature of the Board's actions to effectively enforce the violation. If

a Citation is appealed to the District Court, the District Court cannot step in and tell a violator what aspects of an approved plan can be changed or develop a compliance plan for the violator. The appropriate venue for these enforcement actions is in front of the Planning Board, which has sole authority over the approved plans. The Planning Board's decision can then be appealed to Circuit Court as a judicial review proceeding. This change will ensure that enforcement hearings are procedurally appealed in the same way as all other Planning Board actions. The change will also allow alleged violators an opportunity to be heard in a low cost and informal proceeding and will provide the public an opportunity to be heard much the same as in the original action for which the violation is alleged.

Additional changes to this section serve to clarify and improve the enforcement process. These changes include adding Notices of Violation as another enforcement tool to give an alleged violator the opportunity to correct a violation before any Civil Fine is issued or a hearing occurs. This is especially helpful for violations that were inadvertent and are easy to fix. The changes to this Section also allow the Planning Board to delegate the findings of fact to a Hearing Officer who will submit a recommendation to the Board, similar to the way that a staff recommendation is made to the Board for its regulatory action. The Board retains the authority to make the final decision and determine whether the outcome of the hearing includes an Administrative Civil Penalty, Civil Fine, compliance plan, or other remedy as provided by law.

Chapter 59

For the purposes of the Planning Board, violations of Chapter 59 only apply to the enforcement of Site Plans. The changes to Section 59-A-1.3 have already been included with ZTA-09-03 but are also included here in case ZTA 09-03 does not pass. As previously discussed with ZTA 09-03, those changes include raising the initial Civil Fine from \$500 to \$1,000 and separating the enforcement of Planning Board Actions from other enforcement measures by the Department of Permitting Services under Chapter 59. The changes to Section 59-D-3.6 include clarification of the Board's authority to impose an Administrative Civil Penalty. The importance of having the Planning Board enforce its own actions, and the value of extending the Administrative Civil Penalty has been addressed in the discussion of Section 50-41.

Chapter 22A

The proposed changes to Chapter 22A are to create a consistent enforcement process for all Planning Board Actions, specifically aligning Chapter 22A enforcement with Section 50-41 enforcement. The changes provide the right for the Planning Director to issue Notices of Violation and Citations that are appealable to the Planning Board and to allow the Planning Board to designate a Hearing Officer for its

enforcement cases¹. Other changes to this Chapter are to clarify some of the ambiguities in the law and to make it consistent with the Forest Conservation Regulations.

ENFORCEMENT RULES RE-DRAFT

Within the last year, the Board reviewed and adopted Draft Enforcement Rules that were then transmitted to the County Council. The Rules were drafted primarily to allow the Planning Board to hire a Hearing Officer with subpoena power, assuming such authority was granted by a change in the state law. The County Council postponed acting on the Draft Enforcement Rules until the Board received such authority. Unfortunately, the proposed legislation has failed for two consecutive years in Annapolis for reasons unrelated to the rationale behind the bill.

This Enforcement Package includes updated Enforcement Rules that are no longer linked to whether the Board obtains subpoena power. By expanding the ability of the Board to designate a Hearing Officer, the Board is able to take advantage of such authority held by other qualified agencies and entities such as the State's Office of Administrative Hearings. These Rules are necessary for the success of the entire enforcement program. Specifically, the proposed Enforcement Rules lay out the hearing procedures for the Hearing Officer and the Planning Board including pre-hearing procedures, evidentiary rules, and time limitations. The purpose of these Rules is to establish effective procedures for the Planning Department and Planning Board to follow in enforcement cases. These Rules provide guidance to alleged violators about the Planning Board's enforcement procedures and ensure adequate due process. In addition, the proposed Rules provide notice to the public about the Planning Board's enforcement process. The Enforcement Rules work in conjunction with the proposed law changes to establish an efficient and effective enforcement program for Planning Board actions.

RECOMMENDATION

We recommend that the Planning Board vote to adopt the Enforcement Rules, and that they approve the Zoning Text Amendment, the Subdivision Regulation Amendment, and Bill for Chapter 22A for transmittal to the County Council for further action.

Attachment One - proposed revisions to Chapter 50, the Subdivision Regulations
Attachment Two- proposed revisions to Chapter 59, the Zoning Ordinance
Attachment Three- proposed revisions to Chapter 22A, the Forest Conservation Law
Attachment Four- proposed Enforcement Rules

¹ The ability to assess an Administrative Civil Penalty already exists in Chapter 22A.