

Public Hearing

MEMORANDUM

November 20, 2009

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney 

SUBJECT: **Public Hearing:** Subdivision Regulation Amendment (SRA) 09-03;
Enforcement - Amendments

SRA 09-03, Enforcement Amendments, sponsored by the Council President at the request of the Planning Board, was introduced on October 6, 2009. SRA 09-03 would revise the procedures to enforce a Planning Board action and generally amend the provisions for issuance, enforcement, and appeals of Planning Board actions. The Planning, Housing, and Economic Development Committee will schedule a worksession on this matter at a later date.

This SRA, in addition to Zoning Text Amendment 09-09 and Bill 34-09, was recommended by the Planning Board to have a consistent set of procedures for zoning, subdivision, and forest conservation violations. SRA 09-03 would allow the Planning Board to set an administrative civil penalty in excess of the \$500 fine allowed by Article 28. The Planning Board would be able to set the administrative civil penalty based on a number of factors, including the severity of the violation and the willfulness of the violator. It would also establish a Planning Board hearing process if any fine is unpaid after 35 days.

The Planning Board's authority to enforce its subdivision and zoning actions is from the Maryland Code, Article 28 §7-116 (h):

(h) Additional remedies in Montgomery County; enforcement.-

(1) (i) In addition to all other remedies provided by law, in Montgomery County, the district council may authorize the planning board to impose civil monetary fines and penalties and, when the public health, safety, or welfare are threatened, issue stop work orders for violations....

(2) A fine, not to exceed \$500, may be imposed for each violation. The district council may establish a schedule of fines for each violation and may adopt procedures, consistent with this section, for imposing and collecting those fines. Each day any violation continues shall constitute a separate offense.

(3) The district council may provide that the planning board may enforce the imposition of fines and penalties in a manner consistent with the process requiring

certain notification and hearing under Article 66B, § 7.02 of the Code.¹ The imposition of fines and penalties under this subsection may not be subject to an appeal to the Board of Zoning Appeals.

(4) The district council may provide that the planning board, through counsel, may prosecute violations for which civil monetary fines or penalties are imposed....

This packet contains:
SRA 09-03

Circle #
1 – 13

F:\Land Use\SRAs\SRA 09-03 Enforcement\Public Hearing SRA 09-03

¹ § 7.02. Civil penalty for zoning violation...

(c) Citation.-

- (1) A zoning official may deliver a citation to a person believed to be committing a civil zoning violation.
- (2) (i) The zoning official shall keep a copy of the citation. (ii) The citation shall bear a certification attesting to the truth of the matters set forth in the citation.
- (3) The citation shall contain: (i) The name and address of the person charged; (ii) The nature of the violation; (iii) The location and time of the violation; (iv) The amount of the fine; (v) The manner, location, and time in which the fine may be paid; and (vi) The cited person's right to elect to stand trial for the violation....

(e) Election to stand trial.-

- (1) A person who receives a citation may elect to stand trial for the offense by filing with the zoning official a notice of intention to stand trial.
- (2) The person electing to stand trial shall give notice at least 5 days before the date set forth in the citation for the payment of fines.
- (3) After receiving a notice of intention to stand trial, the zoning official shall forward the notice to the District Court having venue, with a copy of the citation.
- (4) After receiving the citation and notice, the District Court shall schedule the case for trial and notify the defendant of the trial date.
- (5) All fines, penalties, or forfeitures collected by the District Court for zoning violations shall be remitted to the county in which the zoning violation occurred.

(f) Failure to pay fine or notice of intention to stand trial; formal notice of violation; adjudication.-

- (1) If a person who receives a citation for a violation fails to pay the fine by the date of payment set forth on the citation and fails to file a notice of intention to stand trial, a formal notice of the violation shall be sent to the owner's last known address.
- (2) If the citation is not satisfied within 15 days after the date the formal notice of violation is mailed, the person shall be subject to an additional fine not exceeding twice the amount of the original fine.
- (3) If the person who receives the citation does not pay the citation by the 36th day after the formal notice of violation is mailed, the zoning official may request the District Court to adjudicate the violation.
- (4) After the zoning official requests adjudication, the District Court shall schedule the case for trial and summon the defendant to appear....

Ordinance No.
Subdivision Regulation Amend. No. 09-03
Concerning: Enforcement-Amendments
Revised: 9-22-09; Draft No.
Introduced:
Public Hearing:
Adopted:
Effective:

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

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Subdivision Regulations to:

- (1) revise the procedures to enforce a Planning Board action; and
- (2) generally amend the provisions for issuance, enforcement, and appeals of Planning Board actions.

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
Section 50-41, Enforcement

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. Section 50-41 is amended as follows:**

2 **50-41. Enforcement.**

3 (a) *Definitions.* In this section, these terms have the following meanings:

4 *Administrative Civil Penalty.* A requirement to pay a sum of money for violating a
5 *Planning Board action.*

6 [(1)] *Citation.* A document noting a violation of a Planning Board [Action] action,
7 seeking to impose a civil fine or [penalty] corrective action.

8 [(2)] *Civil Fine [or Penalty].* A requirement to pay a predetermined [monetary]
9 sum of money [upon the issuance of a citation] for violating a Planning Board
10 [Action] action.

11 [(3)] *Enforcement Agent.* The Planning Director, or the Director's designee
12 responsible for determining compliance with a Planning Board [Action] action.

13 *Notice of Hearing.* An administrative notice issued by the Planning Director that
14 notifies an alleged violator where and when an enforcement hearing will be held by
15 the Planning Board or the Board's designee to address an alleged violation.

16 *Notice of Violation.* A notice issued by an enforcement agent that notifies a
17 recipient of a violation and specifies the remedial action that the recipient must
18 take to avoid further enforcement action.

19 [(4)] *Person.* An individual, partnership, corporation, organization, or other entity,
20 or combination thereof, [whether singular or plural] that owns property or
21 otherwise has an interest or responsibility for property that [was] is the subject of a
22 Planning Board [Action] action.

23 [(5)] *Planning Board [Action] action.* A final decision on a preliminary plan, site
24 plan, project plan, supplementary plan, water quality plan, or other plan, including
25 all associated terms, conditions, requirements, and other obligations or limits,
26 made by the Planning Board under state law and Chapters 50 and 59, including any
27 regulations issued under state or County law. A Planning Board [Action] action
28 does not include a decision made by the Board under Chapter 22A.

29 [(6)] *Planning Director*. The staff member in the [Department of Park and
 30 Planning] Maryland-National Capital Park and Planning Commission who is in
 31 charge of all planning, zoning, and land development approval activities [of the
 32 Department] for the Commission in Montgomery County, and who reports directly
 33 to the Planning Board, or the Director's designee.

34 [(7)] *Stop Work Order [or Corrective Order]*. An administrative order issued by an
 35 [Enforcement Agent requiring] enforcement agent that requires a person to
 36 discontinue any further development, construction, or other land disturbance
 37 activity authorized by a Planning Board [Action] action until a violation has been
 38 corrected.

39 [(b)] *Citation; Civil Fine or Penalty*.

40 (1) The Enforcement Agent may deliver a citation to a person believed to be in
 41 violation of a Planning Board Action. The Planning Board will retain a copy
 42 of the citation. The citation must include a certification by the Enforcement
 43 Agent attesting to the truth of the matters set forth in the citation.

44 (2) The citation must contain at least the following information:

- 45 a. The name and address of the person charged;
- 46 b. The nature of the violation;
- 47 c. The place where and the approximate time that the violation occurred;
- 48 d. The amount of the fine assessed;
- 49 e. The manner, location, and time in which the fine may be paid and the
 50 party to whom the fine should be paid;
- 51 f. The date by which the payment must be made; and
- 52 g. A statement advising the person of the right to elect to stand trial for
 53 the violation.

54 The Planning Board may utilize any citation consistent with this Section,
 55 including the State of Maryland Uniform Civil Citation form.]

56 [(b)] *Notice of Violation*.

57 (1) The Planning Director may issue a notice of violation to a person whom the
58 Director believes to have committed a violation of a Planning Board action.
59 The Director must retain a copy of the notice. A notice of violation issued
60 under this subsection must be served on the alleged violator personally, on
61 the alleged violator's agent at the activity site, or by certified mail to the
62 alleged violator's last known address.

63 (2) The notice of violation must contain at least the following information:
64 (A) the name and address of the person charged;
65 (B) the nature of the violation;
66 (C) the place where and the approximate date when the violation
67 occurred;
68 (D) a statement advising the alleged violator of the corrective or remedial
69 action which must be taken and the date by which the corrective or
70 remedial action must be completed. The corrective or remedial action
71 may include a meeting with Commission staff to establish a
72 compliance plan; and
73 (E) a statement advising the alleged violator of the right to a hearing
74 before the Planning Board or its designee.

75 (c) Citation.

76 (1) The Planning Director may deliver a citation to a person whom the Director
77 believes to have committed a violation of a Planning Board action. The
78 Director must retain a copy of each citation. The Director must attest to the
79 truth of the facts and allegations in the citation. A citation issued under this
80 subsection must be served on the alleged violator personally, on the alleged
81 violator's agent at the activity site, or by certified mail to the alleged
82 violator's last known address.

83 (2) The citation must contain at least the following information:
84 (A) the name and address of the person charged;

- 85 (B) the nature of the violation;
 86 (C) the place where and the approximate date when the violation
 87 occurred;
 88 (D) the amount of fine assessed;
 89 (E) where, when, and to whom the fine may be paid; and
 90 (F) a statement advising the violator of the right to a hearing before the
 91 Planning Board or its designee.

92 The Planning Board may use any citation consistent with this Section,
 93 including the State Uniform Civil Citation form.

94 (d) Notice of Hearing.

- 95 (1) The Planning Director may issue a notice of hearing, which must be served
 96 on the alleged violator personally, on the alleged violator's agent at the
 97 activity site, or by certified mail to the alleged violator's last known address.
 98 (2) The notice of hearing must contain at least the following information:
 99 (A) the name and address of the person charged;
 100 (B) the nature of the violation;
 101 (C) the place where and the approximate date when the violation
 102 occurred; and
 103 (D) a statement advising the alleged violator of the date, time, and
 104 location of the hearing before the Planning Board or its designee.

105 [(c)] (e) [Imposition of] Civil [Fines and Penalties] Fine and Penalty.

- 106 (1) A citation may require the [payment of] recipient to pay a civil fine [or
 107 penalty] for [the alleged] a violation of [the] a Planning Board [Action]
 108 action.
 109 (2) The maximum [amount of the] fine for each violation of a Planning Board
 110 [Action] action is [set at \$500.00] the maximum allowed by Article 28 §7-
 111 116(h) of the Maryland Code as amended for each day that the violation [has
 112 occurred] continues.

- 113 (3) Each day that [the] a violation has not been corrected [shall] must be
 114 [considered] treated as a separate violation, and the applicable fine [or
 115 penalty will] must continue to accrue each day until the violation is
 116 corrected[,] without [the need of] issuing a new citation each day.
- 117 (4) In addition to any other remedy under this Article, a person who violates a
 118 Planning Board action, any applicable regulation, or any associated
 119 agreement or restriction, may be subject to an administrative civil penalty.
- 120 (5) In setting the amount of the administrative civil penalty, the Planning Board
 121 or its designee must consider:
- 122 (A) the willfulness of the violation;
 123 (B) the degree of deviation from the approved Planning Board action;
 124 (C) the cost of any needed corrective action or restoration;
 125 (D) any adverse impact on the immediate neighborhood and the larger
 126 community;
 127 (E) the extent to which the subject violation is part of a recurrent pattern
 128 of the same or similar violations committed by the violator;
 129 (F) any economic benefit that accrued to the violator or any other person
 130 as a result of the violation;
 131 (G) the cost to implement any conditions in the applicable Planning Board
 132 action;
 133 (H) the degree of cooperation shown, or voluntary mitigation measures
 134 taken, by the violator;
 135 (I) the extent to which any other person contributed to the violation;
 136 (J) the impact, if any, on the violator's ability to perform corrective
 137 actions because of a change in ownership of the property; and
 138 (K) any other relevant factor.
- 139 (6) The Board, after a public hearing on the violation, must adopt a resolution
 140 which specifies the amount of any administrative civil penalty and the

141 Board's reason to impose the penalty.

142 [(d)] (f) [Request for District Court Review] Hearing.

143 (1) A person who receives a citation imposing a civil fine or [penalty] a notice
 144 of violation may elect [to stand trial for the offense] a hearing before the
 145 Planning Board or its designee by filing a request for hearing with the
 146 [Planning] Board [a notice of intention to stand trial]. The [notice of
 147 intention] request for hearing must be [given to the Chairman of] received
 148 by the [Montgomery County Planning] Board [no less than 5 days before the
 149 date that the payment is due as established on the citation.] within 15 days
 150 after the citation or notice of violation was issued. The filing of a request for
 151 a hearing does not stay an administrative order to stop work, stabilize a site,
 152 or stop a violation.

153 (2) [Upon receipt of the notice of intention to stand trial, the Planning Board
 154 will forward to the District Court having venue a copy of the citation and the
 155 notice of intention to stand trial. On receipt of the citation, the District Court
 156 will schedule the case for trial and notify the defendant of the trial date]. If
 157 the Board or its designee receives a request to hold a hearing under this
 158 Article, the Board or its designee must promptly schedule a hearing, unless
 159 the requestor consents to a delay, and must issue a notice of hearing.

160 (3) The Board may assign a hearing officer, including a Hearing Examiner from
 161 the Office of Zoning and Administrative Hearings, to conduct a public
 162 hearing and submit a report and recommendation on any alleged violation of
 163 this Chapter or of a Planning Board action. The hearing officer must submit
 164 the required report and recommendation to the Board not later than 60 days
 165 after the hearing record closes, but the hearing officer may by order extend
 166 the time to file the report.

167 (4) All fines, penalties, or forfeitures collected by the Planning Board [or
 168 District Court for the violations will] under this Chapter must be remitted to

169 the Planning Board[,] and placed in the general funds of the Maryland-
 170 National Capital Park and Planning Commission, and may be [utilized] spent
 171 by the Commission for project corrections, plan enforcement, or other
 172 Commission purposes. The Commission, in its sole discretion, may [utilize]
 173 spend collected fines or penalties to perform or correct some or all [of the]
 174 violations noted in [the] a citation[,] without obligating the Commission
 175 instead of the person responsible to [undertake project corrections in lieu of
 176 the developer] correct any violation.

177 [(e)] (g) [*Failure to Pay*] Nonpayment of Fine [or Penalty].

- 178 (1) If a person who receives a citation [for a violation,] does not timely pay the
 179 fine by the [payment] due date [as established] listed in the citation [and fails
 180 to] or file a [notice of intention to stand trial] request for hearing, a formal
 181 notice of the violation [shall] must be sent to the person's last known
 182 address. If the citation is not satisfied within 15 days [from the date of] after
 183 the notice is issued, the [person] recipient is liable for an additional fine, as
 184 specified in the notice, which must not [to] exceed twice the original fine.
- 185 (2) If, after 35 days after the notice under this subsection is issued, the [citation]
 186 fine due is not [satisfied] paid, the Planning Board [may request adjudication
 187 of the case through the District Court. The District Court will schedule the
 188 case for trial and summon the defendant to appear.] must schedule and hold
 189 a hearing and, after holding the hearing, may impose any civil fine or
 190 administrative civil penalty authorized by this Section, and also may:
- 191 (A) suspend or revoke the plan that is the subject of a Planning Board
 192 action;
- 193 (B) approve a compliance program that lists each remedial action that
 194 must be taken;
- 195 (C) require the violator to post a bond or other surety to guarantee
 196 completion of a compliance program;

197 (D) allow the violator to propose modifications to the plan; or

198 (E) take any combination of these actions.

199 [(f)] (h) [*Prosecution by*] Authority of the Office of the General Counsel. The [Office of
200 the] General Counsel [for] of the Maryland-National Capital Park and Planning
201 Commission [will] may prosecute [a] and take any other necessary legal action
202 regarding any violation under this [section] Section.

203 [(g)] (i) Enforcement rules; Conduct of Hearing. [Proceedings before the District Court
204 will be conducted in such manner as provided in Article 23A, Sections 3(b)(8)
205 through (15) of the Maryland Code Annotated.] The Planning Board must:

206 (1) adopt rules to administer and enforce this Section as a method (2) regulation,
207 subject to Council review as provided in Section 2A-15; and

208 (2) conduct any proceeding under this Section as provided in those rules.

209 [(h)] *Payment of Court Costs.* A person found by the District Court to be in violation of
210 a Planning Board Action will pay the costs of the proceedings in the District
211 Court.]

212 [(i)] (j) [*Issuance of*] Stop Work [Orders or Corrective Orders] Order.

213 (1) [In addition to the authority to impose civil fines and penalties, in instances
214 where] The enforcement agent may issue a stop-work order if the
215 [*Enforcement Agent*] enforcement agent reasonably [determines] finds that:

216 [a.] (A) a person is [in violation of] violating any element of a Planning
217 Board [Action,] action; and

218 [b.] (B) the violation threatens or may threaten the public health, safety, or
219 welfare [are threatened or may be threatened because of the violation;
220 then Enforcement Agent may also issue a stop work order or
221 corrective order].

222 (2) [An] A stop-work order must include the following information as [may be]
223 applicable:

224 [a.] (A) [The] the name and address of the person charged;

- 225 [b.] (B) [The] the nature of the violation;
- 226 [c.] (C) [The] the place where and the approximate [time that] date when the
- 227 violation occurred; and
- 228 [d.] (D) [A] a clear statement [indicating] of the action that must be taken or
- 229 discontinued to cure the violation, including [the] any requirement to
- 230 prepare a plan of compliance. [; and]
- 231 [e. The date, approximate time, and location for the Planning Board
- 232 hearing to review the order.]

233 The [order must include a certification by the Enforcement Agent attesting]

234 enforcement agent must attest to the truth of the [matters set forth] facts and

235 allegations in the order.

236 (3) The [Enforcement Agent] enforcement agent must prominently display the

237 order in close proximity to the location where the violation has occurred. In

238 addition, the [Enforcement Agent] enforcement agent may deliver or mail,

239 as practical, a copy of the order to the last known address of the person [that]

240 who secured approval of the Planning Board [Action] action.

241 (4) When [an] a stop-work order has been posted, the recipient must

242 immediately discontinue any further development or construction activities

243 authorized [in accordance with the] by a Planning Board [Action] action

244 until [such time as] the order is rescinded. [An] A stop-work order [posted

245 by the Enforcement Agent has the effect of suspending] suspends the [entire

246 underlying] Planning Board [plan] approval of the entire underlying plan,

247 unless:

248 [a.] (A) the Planning Board, in [its consideration of] taking the Planning

249 Board [Action] action, approved phasing [for] of the project; and

250 [b.] (B) the [Enforcement Agent determines] enforcement agent finds that

251 the violation involves only [relates to either]:

252 (i) [a certain phase] one or more phases of [the] a project, but not

253 other phases of the same project; or

254 (ii) activities on a single lot or parcel.

255 In these instances, the order may only suspend the Planning Board's
256 approval as it relates to those phases or lots [determined to be in] where the
257 violation exists.

258 (5) [Upon posting an order, the Enforcement Agent will schedule a review
259 hearing with the Planning Board at the Board's next available regular
260 session.] The recipient of a stop-work order may request a hearing to
261 contest the validity of the order. [In the event that] If the enforcement agent
262 finds that a hearing before the Planning Board is not practical in a reasonable
263 [period of] time, [as determined by the Enforcement Agent the matter may
264 be reviewed by the Chairman] the Chair or Vice-Chair of the [Planning]
265 Board [or Vice-Chair] may review the order. A determination by the Chair
266 or Vice-Chair [will have] has the same effect as if the Board [acted under
267 this section] reviewed the order. The [Planning] Board or [Chairman] Chair,
268 if applicable, [will hear the case] must review the order de novo. [In the
269 event] If the violation is corrected and a plan of compliance prepared by the
270 [person prior to] recipient of the order before the hearing [as] is confirmed
271 by the [Enforcement Agent] enforcement agent, the hearing [will] must be
272 cancelled.

273 (6) At the Planning Board hearing, the [Enforcement Agent will indicate]
274 enforcement agent must justify to the Board the grounds and reasoning [for
275 issuing] to issue the order. The recipient must [state all grounds concerning]
276 explain why the order should be discontinued, and may propose a plan of
277 compliance indicating how and when the violations will be corrected. The
278 [Planning] Board [will determine] must decide if the order should be
279 continued, modified, or rescinded, and if a plan of compliance should be
280 approved. The Board's [determination] decision that [the] a stop-work order

281 should continue [has the effect of revoking the] revokes any underlying
 282 [Planning] Board approvals for the entire project or [portions] any part of the
 283 project as [determined by] the Board specifies until [such time as] the
 284 violation is corrected.

285 (7) [An appeal of a] A Board decision [of the Planning Board not] to continue or
 286 modify [or rescind] an order [will be administered as an] may be appealed to
 287 the Circuit Court under the rules for appeals of administrative [appeal filed
 288 with the circuit court, not as a municipal infraction] agency actions. [The
 289 Board of Appeals does not have jurisdiction to review an administrative
 290 appeal arising from a decision of the Planning Board.]

291 (8) [An] A stop-work order [will] must be rescinded when the [Planning] Board
 292 or [Enforcement Agent determines] the enforcement agent finds that [the
 293 violation has] all violations specified in the order have been satisfactorily
 294 corrected, which determination should not be unreasonably withheld, or the
 295 Board approves a compliance plan that addresses any uncorrected violation.

296 [(j)] (k) Other Remedies. The authority in this Section to issue civil fines, administrative
 297 civil penalties, and impose stop work orders are in addition to any other [rights or]
 298 authority of the Planning Board to enforce its actions, including seeking injunctive,
 299 declaratory, or other relief. The [election] decision to pursue one remedy does not
 300 preclude the [Planning] Board from pursuing [such] any other available [remedies
 301 as the Board deems appropriate] remedy.

302 [(k)] (l) Exclusive Authority. The Planning Board or its designee has exclusive authority
 303 to enforce violations of a Planning Board [Action] action. The authority granted in
 304 this Chapter supersedes any authority [for enforcing] to enforce a Planning Board
 305 [Actions] action [that may have been] granted to the Planning Board or any other
 306 [officer, agent, or] County or State agency [of Montgomery County or the State of
 307 Maryland in Chapter 1 of the Code].

309 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of Council
310 adoption.

311

312 *Approved:*

313

314

315 Isiah Leggett, County Executive Date

316

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

318

319

320 Linda M. Lauer, Clerk of the Council Date