

Action

**MEMORANDUM**

January 29, 2010

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: Action - Zoning Text Amendment 09-14, Hearing Examiner – Report Dissemination

**PHED Recommendation:** On January 21, 2010 the Committee (3-0) recommended approval of ZTA 09-14 as introduced.

**Background**

Zoning Text Amendment (ZTA) 09-14 is being sponsored by Councilmembers Knapp, Trachtenberg, and Leventhal at the request of the Hearing Examiner. Currently, when the Hearing Examiner completes a report, copies must be mailed to the petitioner, the Planning Board, and to people and organizations that appeared and testified at the Examiner's hearing. The requirement to copy and mail full reports and recommendations was written when the internet was not universally available.

Under ZTA 09-14, a mailed letter would describe the special exception or local map amendment request, state whether the Hearing Examiner recommended approval or denial, and provide instructions to locate a copy of the report on the County's website. The notice would also include a statement concerning a party's right to request oral argument before the Board of Appeals. The Hearing Examiner's office would be required to mail full reports and recommendations only to a person or entity entitled to notice of the report's issuance who states in writing that they do not have access to the internet and that they want the full report.

ZTA 09-14, in the opinion of the Hearing Examiner, would provide adequate information to interested parties and reduce administrative costs.

A public hearing on ZTA 09-14 was held on January 19, 2010. The Planning Board and Planning Staff recommended approval.

**Should a summary of the Hearing Examiner report and recommendation be mailed to all parties who appeared at a zoning hearing?**

Although mailing a summary to parties is significantly less costly than copying and mailing full reports, it is still more expensive than e-mailing that information. The Hearing examiner fears that e-mail would get lost in the ever present flood of e-mail. Aggrieved parties have 10 days from the day that the reports are transmitted to request oral argument. Mailing the summary strikes the appropriate balance between mailing everything and merely e-mailing. It is important that the means of communication attracts the notice of the recipient.

The Hearing Examiner’s procedure, adopted by Council resolution 13-769, does not address the dissemination of the Hearing Examiner’s report.

The Planning, Housing, and Economic Development Committee recommended approval of ZTA 09-14 as introduced.

**Post Committee Testimony**

The Montgomery County Civic Federation requested assurance that the Council does not intend to prevent anyone from requesting and obtaining a paper copy of a Hearing Examiner report through payment of a per-page rate for the copy. The Hearing Examiner did not intend to prohibit the purchase of paper copies; the action of the Planning, Housing, and Economic Development Committee did not indicate any intent to prohibit the purchase of paper copies. Staff added a statement to the Council’s draft opinion in the ZTA to state that the adoption of ZTA 09-14 is not intended to prevent anyone from requesting and obtaining a paper copy of a Hearing Examiner report through payment of a per-page rate for the copy.

Currently, the Hearing Examiner does not post special exception reports concerning accessory dwelling unit special exceptions on the internet. The Civic Federation’s second recommendation was to require the internet posting of all Hearing Examiner reports. ZTA 09-14 as introduced would require the internet posting of all reports.

| <u>This Packet Contains</u>   | <u>© number</u> |
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Zoning Text Amendment No: 09-14  
Concerning: Hearing Examiner -  
Report Dissemination  
Draft No. & Date: 1 - 12/01/09  
Introduced: December 8, 2009  
Public Hearing: January 19, 2010  
Adopted:  
Effective:  
Ordinance No:

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

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By: Councilmembers Knapp, Trachtenberg, and Leventhal

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- amend the dissemination requirements for reports and recommendations from the Hearing Examiner

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-4. COUNTY BOARD OF APPEALS  
Section 59-A-4.61 Generally

DIVISION 59-H-5 HEARING EXAMINER  
Section 59-H-5.12 Report

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment No. 09-14, sponsored by Councilmembers Knapp, Trachtenberg, and Leventhal at the request of the Hearing Examiner, was introduced on December 8, 2009. Under ZTA 09-14, a mailed letter would describe the special exception or local map amendment request, state whether the Hearing Examiner recommended approval or denial, and provide instructions to locate a copy of the report on the County's website. The notice would also include a statement concerning a party's right to request oral argument before the Board of Appeals. The Hearing Examiner's office would be required to mail full reports and recommendations only to a person or entity entitled to notice of the report's issuance who states in writing that they do not have access to the internet and that they want the full report.

The Montgomery County Planning Board, in its report to the Council, recommended that the text amendment be approved. Planning Staff also recommended approval.

The County Council held a public hearing on January 19, 2010 to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on January 21, 2010 to review the amendment. The Committee recommended approval of ZTA 09-14 as introduced. ZTA 09-14, in the opinion of the Committee, would provide adequate information to interested parties and reduce administrative costs.

The District Council reviewed Zoning Text Amendment No. 09-14 at a worksession held on February 2, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee. By approving this ZTA, the Council does not intend to prevent anyone from requesting and obtaining a printed copy of a Hearing Examiner's report through payment of a per-page rate for the copy.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 09-14 will be approved as introduced.

ORDINANCE

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

**Sec. 1. DIVISION 59-A-4. is amended as follows:**

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

\* \* \*

**59-A-4.61. Generally.**

\* \* \*

(d) When the Hearing Examiner transmits a report to [Concurrently with the transmittal to the Council or] the Board of Appeals, the Examiner must at the same time send written notification that the report and recommendation has been issued, by regular mail, [copies of the Hearing Examiner’s report and recommendation must be mailed] to the petitioner, the Planning Board, and [to] all persons [who and associations which] or entities who appeared and testified in person or by counsel at the hearing, as evidenced by the hearing transcript. The notification must briefly describe the special exception requested, state whether the Hearing Examiner recommended approval or denial, provide instructions to locate a readable and printable copy of the report on the County’s web site, and identify the right to request oral argument before the Board of Appeals. The Hearing Examiner must send a paper copy of the report and recommendation to the Planning Board on request, and to any person or entity entitled to notice of the report’s issuance who states in writing that they do not have access to email and/or the internet.

\* \* \*

**Sec. 2. DIVISION 59-H-5 is amended as follows:**

**DIVISION 59-H-5. HEARING EXAMINER.**

\* \* \*

**Section 59-H-5.12. Report.**

28 \* \* \*

29 (c) When the Hearing Examiner transmits a report to the District Council, the  
30 Examiner must also send written notification that the report and  
31 recommendation has been issued, by regular mail, [copies] to the applicant,  
32 the Planning Board, and each person or [association] entity who entered an  
33 appearance at the hearing, as shown in the hearing transcript. The  
34 notification must briefly describe the rezoning requested, state whether the  
35 Hearing Examiner recommended approval or denial, provide instructions to  
36 locate a readable and printable copy of the report on the County's web site,  
37 and identify the right to request oral argument before the District Council.  
38 The Hearing Examiner must send a paper copy of the report and  
39 recommendation to the Planning Board on request, and to any person or  
40 entity entitled to notice of the report's issuance who states in writing that  
41 they do not have access to email and/or the internet.

42 \* \* \*

43 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of  
44 Council adoption.

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46 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

January 14, 2010

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 09-14

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 09-14 at its regular meeting on January 14, 2010. By a vote of 4:0, the Board recommends approval of the text amendment as introduced.

Currently, when the Hearing Examiner transmits a report and recommendation to the County Council or the Board of Appeals (based on whether the case is a local map amendment or a special exception request) copies must be mailed to the petitioner, the Planning Board, and to all persons and associations that appeared and testified in person or by counsel at the hearing.

ZTA 09-14 would repeal the current process in favor of a less costly process requiring only that written notice be given of the issuance of the Hearing Examiner report and recommendation. The written notification would describe the special exception or local map amendment request, state whether the Hearing Examiner recommended approval or denial, provide instructions to locate a readable and printable copy of the report on the County's web site, and identify the right to request oral argument before the Board of Appeals. The Board believes that the proposal strikes a balance between reasonable notice requirements and administrative costs.

## CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, January 14, 2010.

A handwritten signature in black ink, appearing to read "Royce Hanson", written in a cursive style.

Royce Hanson  
Chairman

RH: GR



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item # 7**  
**1/14/10**

**DATE:** January 5, 2010  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review  
 Ralph Wilson, Zoning Supervisor, Development Review  
**FROM:** Greg Russ, Zoning Coordinator  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To amend the dissemination requirements for reports and recommendations from the Hearing Examiner

**TEXT AMENDMENT:** No. 09-14  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Knapp  
**INTRODUCED DATE:** December 8, 2009

**PLANNING BOARD REVIEW:** January 14, 2010  
**PUBLIC HEARING:** January 19, 2010; 1:30 PM

**STAFF RECOMMENDATION:** APPROVAL to amend the dissemination requirements for reports and recommendations from the Hearing Examiner to help defray administrative costs while continuing to provide adequate information to interested parties.

**BACKGROUND/ANALYSIS**

ZTA 09-14 was sponsored by Councilmember Knapp at the request of the Hearing Examiner. Currently, when the Hearing Examiner transmits a report and recommendation to the County Council or the Board of Appeals (based on whether the case is a local map amendment or a special exception request) copies must be mailed to the petitioner, the Planning Board, and to all persons and associations that appeared and testified in person or by counsel at the hearing.

ZTA 09-14 would repeal the current process in favor of a less costly process requiring only that written notice be given of the issuance of the Hearing Examiner report and recommendation.. The written notification would describe the special exception or local map amendment request, state whether the Hearing Examiner recommended approval or denial, provide instructions to locate a readable and printable copy of the report on the County's web site, and identify the right to request oral argument before the Board of

Appeals. The proposal is intended to strike a balance between reasonable notice requirements and administrative costs.

The Hearing Examiner's office will be required to copy and mail full reports and recommendations only at the request of a person or entity entitled to notice of the report's issuance who states in writing that they do not have access to email and/or the internet. Staff believes that the proposed text amendment provides adequate measures to address information dissemination while also reducing administrative costs.

## **RECOMMENDATION**

For the reasons stated above, staff recommends approval of ZTA 09-14 to amend the dissemination requirements for reports and recommendations from the Hearing Examiner.

Attachment 1 depicts the proposed text amendment as introduced.

GR

Attachments

1. Proposed Text Amendment 09-14