

Action

MEMORANDUM

April 2, 2010

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Action** - Subdivision Regulation Amendment (SRA) 09-03, Enforcement – Amendments; and ZTA 09-09, Planning Board Enforcement

PHED Recommendation: On March 17, the Committee (2-0-1 Council President Floreen absent) recommended approval of SRA 09-03 and ZTA 09-09 with amendments. The Committee recommended the following amendments to SRA 09-03 beyond editorial changes.

- 1) Revise definition of administrative civil penalty and civil fine to read as follows:
Civil Penalty - A monetary penalty imposed by the Planning Board after considering the factors enumerated in this Chapter for violating a Planning Board action.
Civil Fine - A requirement to pay a predetermined sum of money set forth on an administrative citation for violating a Planning Board action.
- 2) Authorize the Planning Director to use any citation that satisfies the detailed specifications in SRA 09-03; and require fines to be the maximum allowed by Article 28 (\$500 per violation per day).
- 3) Limit the maximum civil penalty to 150% percent of the estimated cost to bring the violation into compliance.

The Committee recommended amending ZTA 09-09 so that the description of the fine is consistent with SRA 09-03.

Background

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.

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. The Planning Board would be permitted to use a hearing examiner to make a report and recommendation. The amount of any penalty would be set after the Board considers a number of factors, including the severity of the

violation and the willfulness of the violator. The Planning Director would be able to fine violators. The SRA would establish a Planning Board hearing process if any fine is unpaid after 35 days.

The hearing on ZTA 09-09 and SRA 09-03 was originally scheduled for November 17, 2009. After due notice, the hearing was postponed until November 24, 2009. The Planning Board spoke in favor, as did David Brown. There was no opposition.

SRA 09-09 – Staff comments and recommendations

1) Amend the definitions.

SRA 09-03 would define “administrative civil penalty” as follows:

A requirement to pay a sum of money for violating a Planning Board action.

The “penalty” should be distinguishable from a fine. Fines are civil penalties, and a civil penalty can be a fine, but a penalty can be different from a fine. A civil penalty can take the form of monetary restitution to people or properties harmed, or it can be a non-monetary action such as revoking the subdivision approval. Although the definition of a penalty is stated as only the payment of a sum of money, the SRA lists other non-monetary actions that the Planning Board could take:

- (A) suspend or revoke the plan that is the subject of a Planning Board action;
- (B) approve a compliance program that lists each remedial action that must be taken;
- (C) require the violator to post a bond or other surety to guarantee completion of a compliance program;
- (D) allow the violator to propose modifications to the plan; or
- (E) take any combination of these actions.

With regard to a sum of money due, SRA 09-03 does not clearly distinguish between a fine and a penalty. The only distinction in the definition is that a fine is a predetermined sum of money.¹

If a fine is a sum of money paid to the Planning Board, a penalty could be paid to the damaged 3rd party (the homeowners’ association or neighboring property). Planning Staff cites the fact that penalties have been imposed in the past without this distinction as a reason not to make this suggested change.

The Committee recommended amending the definitions of a fine and a penalty as follows:

Civil Penalty - A monetary penalty imposed by the Planning Board after considering the factors enumerated in this Chapter for violating a Planning Board action.

Civil Fine - A requirement to pay a predetermined sum of money set forth on an administrative citation for violating a Planning Board action.

¹ “*Civil Fine*. A requirement to pay a predetermined sum of money for violating a Planning Board action”; (see lines 8-10 in the SRA). The only predetermination of a fine in the SRA as drafted is the maximum amount of the fine; see issue number 3.

Staff would recommend the following definition of a “civil penalty” (line 4 under administrative civil penalty):

For violating a Planning Board action, a requirement to:

- a) pay a sum of money to a party harmed by the violation;
- b) take actions to correct or mitigate the violation;
- c) take actions to insure the completion of corrective or mitigating actions; or
- d) allow the Planning Board to revoke or modify the violator’s regulatory approvals.

2) Limit the amount of a monetary penalty.

The SRA lacks any upper limit on a monetary penalty. **The Committee recommended an upper limit, such as 150% of the estimated cost to bring the violation into compliance.**

3) Provide guidelines for determining the amount of a fine or establish the fine as the maximum.

Although there are items that the Board must consider when determining a penalty, the means for the Planning Director to determine a fine are absent. **The Committee recommended making a fine for any violation the maximum fine allowed by law (\$500).**

ZTA 09-09 – Staff comment and recommendation

ZTA 09-09 allows the Planning Board the option to enforce its actions under SRA 09-03. It also adds the possibility of administrative civil penalties in addition to fines. **The Committee recommended conforming the fine provisions of ZTA 09-09 to its recommendations for SRA 09-03.**

This packet contains:

SRA 09-03
ZTA 09-09

Circle #

1 – 16
17 – 20

Ordinance No.
Subdivision Regulation Amend. No. 09-03
Concerning: Enforcement-Amendments
Revised: 3-25-10; Draft No. 2
Introduced: October 9, 2009
Public Hearing: November 24, 2009
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>

OPINION

Subdivision Regulation Amendment No. 09-03 was introduced on October 6, 2009 at the request of the Planning Board.

The County Council held a public hearing on November 24, 2009 to receive testimony concerning the proposed amendment. The Planning Board representative spoke in favor, as did David Brown. There was no opposition. The regulation 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 to review the amendment on March 17, 2010. The Committee recommended the following revisions beyond editorial changes:

- 1) Revise definition of administrative civil penalty and civil fine to read as follows:
Civil Penalty - A monetary penalty imposed by the Planning Board after considering the factors enumerated in this Chapter for violating a Planning Board action.
Civil Fine - A requirement to pay a predetermined sum of money set forth on an administrative citation for violating a Planning Board action.
- 2) Authorize the Planning Director to use a citation that satisfies the detailed specifications in SRA 09-03; and require fines to be the maximum allowed by Article 28 (\$500 per violation per day).
- 3) Limit the maximum civil penalty to 150% percent of the estimated cost to bring the violation into compliance.

The District Council reviewed Subdivision Regulation Amendment No. 09-03 at a worksession held on April 6, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

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, Subdivision Regulation Amendment No. 09-03 will be approved as amended.

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:

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
5 violating a Planning Board action.]] A monetary penalty imposed by the
6 Planning Board after considering the factors in this Section for violating a
7 Planning Board Action.

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

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

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

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

20 Notice of Violation. A notice issued by an enforcement agent that notifies a
21 recipient of a violation and specifies the remedial action that the recipient
22 must take to avoid further enforcement action.

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

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

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

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

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

45 (1) The Enforcement Agent may deliver a citation to a person believed to
 46 be in violation of a Planning Board Action. The Planning Board will
 47 retain a copy of the citation. The citation must include a certification
 48 by the Enforcement Agent attesting to the truth of the matters set forth
 49 in the citation.

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

- 51 a. The name and address of the person charged;
- 52 b. The nature of the violation;
- 53 c. The place where and the approximate time that the violation

- 54 occurred;
- 55 d. The amount of the fine assessed;
- 56 e. The manner, location, and time in which the fine may be paid
- 57 and the party to whom the fine should be paid;
- 58 f. The date by which the payment must be made; and
- 59 g. A statement advising the person of the right to elect to stand
- 60 trial for the violation.

61 The Planning Board may utilize any citation consistent with this

62 Section, including the State of Maryland Uniform Civil Citation

63 form.]

64 (b) Notice of Violation.

65 (1) The Planning Director may issue a notice of violation to a person

66 whom the Director believes to have committed a violation of a

67 Planning Board action. The Director must retain a copy of the notice.

68 A notice of violation issued under this subsection must be served on

69 the alleged violator personally, on the alleged violator's agent at the

70 activity site, or by certified mail to the alleged violator's last known

71 address.

72 (2) The notice of violation must contain at least the following

73 information:

74 (A) the name and address of the person charged;

75 (B) the nature of the violation;

76 (C) the place where and the approximate date when the violation

77 occurred;

78 (D) a statement advising the alleged violator of the corrective or

79 remedial action which must be taken and the date by which the

80 corrective or remedial action must be completed. The

81 corrective or remedial action may include a meeting with
 82 Commission staff to establish a compliance plan; and
 83 (E) a statement advising the alleged violator of the right to a
 84 hearing before the Planning Board or its designee.

85 (c) Citation.

86 (1) The Planning Director may deliver [[a]] an administrative citation to a
 87 person whom the Director believes to have committed a violation of a
 88 Planning Board action. The Director must retain a copy of each
 89 administrative citation. The Director must attest to the truth of the
 90 facts and allegations in the administrative citation. [[A]] An
 91 administrative citation issued under this subsection must be served on
 92 the alleged violator personally, on the alleged violator's agent at the
 93 activity site, or by certified mail to the alleged violator's last known
 94 address.

95 (2) The administrative citation must contain at least the following
 96 information:

97 (A) the name and address of the person charged;

98 (B) the nature of the violation;

99 (C) the place where and the approximate date when the violation
 100 occurred;

101 (D) the amount of fine assessed;

102 (E) where, when, and to whom the fine may be paid; and

103 (F) a statement advising the violator of the right to a hearing before
 104 the Planning Board or its designee.

105 The Planning [[Board]] Director may use any administrative citation
 106 consistent with this Section [, including the State Uniform Civil
 107 Citation form]].

108 (d) Notice of Hearing.

109 (1) The Planning Director may issue a notice of hearing, which must be
 110 served on the alleged violator personally, on the alleged violator’s
 111 agent at the activity site, or by certified mail to the alleged violator’s
 112 last known address.

113 (2) The notice of hearing must contain at least the following information:

114 (A) the name and address of the person charged;

115 (B) the nature of the violation;

116 (C) the place where and the approximate date when the violation
 117 occurred; and

118 (D) a statement advising the alleged violator of the date, time, and
 119 location of the hearing before the Planning Board or its
 120 designee.

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

122 (1) A citation may require the [payment of] recipient to pay a civil fine
 123 [or penalty] for [the alleged] a violation of [the] a Planning Board
 124 [Action] action.

125 (2) The [[maximum]] [amount of the] fine for each violation of a
 126 Planning Board [Action] action is [set at \$500.00] the maximum
 127 allowed by Article 28 §7-116(h) of the Maryland Code as amended
 128 for each day that the violation [has occurred] continues.

129 (3) Each day that [the] a violation has not been corrected [shall] must be
 130 [considered] treated as a separate violation, and the applicable fine [or
 131 penalty will] must continue to accrue each day until the violation is
 132 corrected[,] without [the need of] issuing a new citation each day.

133 (4) In addition to any other remedy under this Article, a person who
 134 violates a Planning Board action, any applicable regulation, or any

- 135 associated agreement or restriction, may be subject to an
 136 administrative civil penalty.
 137 The maximum administrative civil penalty must not exceed 150%
 138 percent of the estimated cost to bring the violation into compliance.
 139 (5) In setting the amount of the administrative civil penalty, the Planning
 140 Board or its designee must consider:
 141 (A) the willfulness of the violation;
 142 (B) the degree of deviation from the approved Planning Board
 143 action;
 144 (C) the cost of any needed corrective action or restoration;
 145 (D) any adverse impact on the immediate neighborhood and the
 146 larger community;
 147 (E) the extent to which the subject violation is part of a recurrent
 148 pattern of the same or similar violations committed by the
 149 violator;
 150 (F) any economic benefit that accrued to the violator or any other
 151 person as a result of the violation;
 152 (G) the cost to implement any conditions in the applicable Planning
 153 Board action;
 154 (H) the degree of cooperation shown, or voluntary mitigation
 155 measures taken, by the violator;
 156 (I) the extent to which any other person contributed to the
 157 violation;
 158 (J) the impact, if any, on the violator's ability to perform corrective
 159 actions because of a change in ownership of the property; and
 160 (K) any other relevant factor.
 161 (6) The Board, after a public hearing on the violation, must adopt a

162 resolution which specifies the amount of any administrative civil
 163 penalty and the Board's reason to impose the penalty.

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

- 165 (1) A person who receives a citation imposing a civil fine or [penalty] a
 166 notice of violation may elect [to stand trial for the offense] a hearing
 167 before the Planning Board or its designee by filing a request for
 168 hearing with the [Planning] Board [a notice of intention to stand trial].
 169 The [notice of intention] request for hearing must be [given to the
 170 Chairman of] received by the [Montgomery County Planning] Board
 171 [no less than 5 days before the date that the payment is due as
 172 established on the citation.] within 15 days after the administrative
 173 citation or notice of violation was issued. The filing of a request for a
 174 hearing does not stay an administrative order to stop work, stabilize a
 175 site, or stop a violation.
- 176 (2) [Upon receipt of the notice of intention to stand trial, the Planning
 177 Board will forward to the District Court having venue a copy of the
 178 citation and the notice of intention to stand trial. On receipt of the
 179 citation, the District Court will schedule the case for trial and notify
 180 the defendant of the trial date]. If the Board or its designee receives a
 181 request to hold a hearing under this Article, the Board or its designee
 182 must promptly schedule a hearing, unless the requestor consents to a
 183 delay, and must issue a notice of hearing.
- 184 (3) The Board may assign a hearing officer, including a Hearing
 185 Examiner from the Office of Zoning and Administrative Hearings, to
 186 conduct a public hearing and submit a report and recommendation on
 187 any alleged violation of this Chapter or of a Planning Board action.
 188 The hearing officer must submit the required report and

189 recommendation to the Board not later than 60 days after the hearing
 190 record closes, but the hearing officer may by order extend the time to
 191 file the report.

192 (4) All fines, penalties, or forfeitures collected by the Planning Board [or
 193 District Court for the violations will] under this [[Chapter]] Section
 194 must be remitted to the Planning Board[,] and placed in the general
 195 funds of the Maryland-National Capital Park and Planning
 196 Commission, and may be [utilized] spent by the Commission for
 197 project corrections, plan enforcement, or other Commission purposes.
 198 The Commission, in its sole discretion, may [utilize] spend collected
 199 fines or penalties to perform or correct some or all [of the] violations
 200 noted in [the] [[a]] an administrative citation[,] without obligating the
 201 Commission instead of the person responsible to [undertake project
 202 corrections in lieu of the developer] correct any violation.

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

204 (1) If a person who receives [[a]] an administrative citation [for a
 205 violation,] does not timely pay the fine by the [payment] due date [as
 206 established] listed in the administrative citation [and fails to] or file a
 207 [notice of intention to stand trial] request for hearing, a formal notice
 208 of the violation [shall] must be sent to the person's last known address.
 209 If the administrative citation is not satisfied within 15 days [from the
 210 date of] after the notice is issued, the [person] recipient is liable for an
 211 additional fine, as specified in the notice, which must not [to] exceed
 212 twice the original fine.

213 (2) If, after 35 days after the notice under this [[subsection]] Subsection is
 214 issued, the [citation] fine due is not [satisfied] paid, the Planning
 215 Board [may request adjudication of the case through the District

216 Court. The District Court will schedule the case for trial and summon
 217 the defendant to appear.] must schedule and hold a hearing and, after
 218 holding the hearing, may impose any civil fine or administrative civil
 219 penalty authorized by this Section, and also may:

220 (A) suspend or revoke the plan that is the subject of a Planning
 221 Board action;

222 (B) approve a compliance program that lists each remedial action
 223 that must be taken;

224 (C) require the violator to post a bond or other surety to guarantee
 225 completion of a compliance program;

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

227 (E) take any combination of these actions.

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

232 [(g)] (i) *Enforcement rules; Conduct of Hearing.* [Proceedings before the District
 233 Court will be conducted in such manner as provided in Article 23A, Sections
 234 3(b)(8) through (15) of the Maryland Code Annotated.] The Planning Board
 235 must:

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

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

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

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

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

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

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

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

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

257 [b.] (B) [The] the nature of the violation;

258 [c.] (C) [The] the place where and the approximate [time that] date
259 when the violation occurred; and

260 [d.] (D) [A] a clear statement [indicating] of the action that must be
261 taken or discontinued to cure the violation, including [the] any
262 requirement to prepare a plan of compliance. [; and]

263 [e. The date, approximate time, and location for the Planning
264 Board hearing to review the order.]

265 The [order must include a certification by the Enforcement Agent
266 attesting] enforcement agent must attest to the truth of the [matters set
267 forth] facts and allegations in the order.

268 (3) The [Enforcement Agent] enforcement agent must prominently
269 display the order in close proximity to the location where the violation

270 has occurred. In addition, the [Enforcement Agent] enforcement
 271 agent may deliver or mail, as practical, a copy of the order to the last
 272 known address of the person [that] who secured approval of the
 273 Planning Board [Action] action.

274 (4) When [an] a stop-work order has been posted, the recipient must
 275 immediately discontinue any further development or construction
 276 activities authorized [in accordance with the] by a Planning Board
 277 [Action] action until [such time as] the order is rescinded. [An] A
 278 stop-work order [posted by the Enforcement Agent has the effect of
 279 suspending] suspends the [entire underlying] Planning Board [plan]
 280 approval of the entire underlying plan, unless:

281 [a.] (A) the Planning Board, in [its consideration of] taking the
 282 Planning Board [Action] action, approved phasing [for] of the
 283 project; and

284 [b.] (B) the [Enforcement Agent determines] enforcement agent finds
 285 that the violation involves only [relates to either]:

- 286 (i) [a certain phase] one or more phases of [the] a project,
 287 but not other phases of the same project; or
 288 (ii) activities on a single lot or parcel.

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

292 (5) [Upon posting an order, the Enforcement Agent will schedule a
 293 review hearing with the Planning Board at the Board's next available
 294 regular session.] The recipient of a stop-work order may request a
 295 hearing to contest the validity of the order. [In the event that] If the
 296 enforcement agent finds that a hearing before the Planning Board is

297 not practical in a reasonable [period of] time, [as determined by the
 298 Enforcement Agent the matter may be reviewed by the Chairman] the
 299 Chair or Vice-Chair of the [Planning] Board [or Vice-Chair] may
 300 review the order. A determination by the Chair or Vice-Chair [will
 301 have] has the same effect as if the Board [acted under this section]
 302 reviewed the order. The [Planning] Board or [Chairman] Chair, if
 303 applicable, [will hear the case] must review the order de novo. [In the
 304 event] If the violation is corrected and a plan of compliance prepared
 305 by the [person prior to] recipient of the order before the hearing [as] is
 306 confirmed by the [Enforcement Agent] enforcement agent, the hearing
 307 [will] must be cancelled.

- 308 (6) At the Planning Board hearing, the [Enforcement Agent will indicate]
 309 enforcement agent must justify to the Board the grounds and
 310 reasoning [for issuing] to issue the order. The recipient must [state all
 311 grounds concerning] explain why the order should be discontinued,
 312 and may propose a plan of compliance indicating how and when the
 313 violations will be corrected. The [Planning] Board [will determine]
 314 must decide if the order should be continued, modified, or rescinded,
 315 and if a plan of compliance should be approved. The Board's
 316 [determination] decision that [the] a stop-work order should continue
 317 [has the effect of revoking the] revokes any underlying [Planning]
 318 Board approvals for the entire project or [portions] any part of the
 319 project as [determined by] the Board specifies until [such time as] the
 320 violation is corrected.

- 321 (7) [An appeal of a] A Board decision [of the Planning Board not] to
 322 continue or modify [or rescind] an order [will be administered as an]
 323 may be [[appealed]] the subject of a petition for judicial review to the

324 Circuit Court under the rules for [[appeals of]] the review of
 325 administrative [appeal filed with the circuit court, not as a municipal
 326 infraction] agency actions. [The Board of Appeals does not have
 327 jurisdiction to review an administrative appeal arising from a decision
 328 of the Planning Board.]

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

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

342 [(k)] (l) Exclusive Authority. The Planning Board or its designee has exclusive
 343 authority to enforce violations of a Planning Board [Action] action. The
 344 authority granted in this Chapter supersedes any authority [for enforcing] to
 345 enforce a Planning Board [Actions] action [that may have been] granted to
 346 the Planning Board or any other [officer, agent, or] County or State agency
 347 [of Montgomery County or the State of Maryland in Chapter 1 of the Code].
 348

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

351

352 *Approved:*

353

354

355 _____
Isiah Leggett, County Executive

Date

356

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

358

359

360 _____
Linda M. Lauer, Clerk of the Council

Date

Zoning Text Amendment No: 09-09
Concerning: Planning Board
Enforcement
Draft No. & Date: 3 – 3/25/10
Introduced: 10/06/09
Public Hearing: 11/17/09
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**

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise provisions for violations, penalties, and enforcement of a Planning Board action; and
- generally amend the provisions related to violations of the Zoning Ordinance.

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

DIVISION 59-A-1 “PURPOSE AND APPLICABILITY”
Section 59-A-1.3 “Violations, penalties, and enforcement”
DIVISION 59-D-3 “SITE PLAN.”
Section 59-D-3.6 “Failure to comply”

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. 09-09 was introduced on October 6, 2009 at the request of the Planning Board.

The County Council held a public hearing on November 24, 2009 to receive testimony concerning the proposed amendment. The Planning Board representative spoke in favor, as did David Brown. There was no opposition. The 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 to review the amendment on March 17, 2010. The Committee recommended the revisions to make ZTA 09-09 consistent with SRA 09-03.

The District Council reviewed Zoning Text Amendment No. 09-09 at a worksession held on April 6, 2010, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

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. 09-09 will be approved as amended.

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-1 is amended as follows:

DIVISION 59-A-1. PURPOSE AND APPLICABILITY

* * *

59-A-1.3. Violations, penalties, and enforcement.

* * *

(b) In addition to all other remedies provided by law, any violation of this Chapter may, as an alternative, be punished by a civil fine [[not exceeding \$500 for each offense or any lesser]] equal to the maximum allowed by Article 28 §7-116(h) of the Maryland Code as amended and any penalty allowed by regulation adopted under method 2. Each day a violation continues is a separate offense.

(c) In addition to any other remedy provided by law, any violation of a Planning Board Action, as defined in Section 50-41, may be enforced under subsection (b) or under Section 50-41, at the discretion of the Planning Board.

~~(c)~~(d) The Planning Board may assign a hearing officer designated by the Planning Board, including a Hearing Examiner from the Office of Zoning and Administrative Hearings, to conduct a public hearing and submit a report and recommendation on any alleged violation of this Chapter or any other Planning Board Action as defined in Section 50-41. The hearing officer must submit the required report and recommendation to the Planning Board not later than 60 days after the hearing record closes, but the hearing officer may by order extend the time to file the report.

* * *

Sec. 2. DIVISION 59-D-3 is amended as follows:

DIVISION 59-D-3. SITE PLAN.

59-D-3.6. Failure to comply.

(a) If the Planning Board finds, on its own motion or after a complaint is filed with the Planning Board or the Department, and after giving due notice to the applicant, the

28 complainant, and all parties previously before the Board on this plan and holding a
29 public hearing or receiving a report of a public hearing held by a designated
30 hearing officer, that any term, condition, or restriction in a certified site plan is not
31 being complied with, the Planning Board may:

- 32 (1) impose a civil fine or administrative civil penalty authorized by Section 50-
33 41;
- 34 (2) suspend or revoke the site plan;
- 35 (3) approve a compliance program which would permit the applicant to take
36 corrective action to comply with the certified site plan;
- 37 (4) allow the applicant to propose modifications to the certified site plan[,] ; or
- 38 (5) take any combination of these actions.

39 (b) If, at the end of the effective period of any compliance program approved by the
40 Planning Board, the Planning Board or its designee finds that the applicant has not
41 taken sufficient corrective action, the Planning Board may, without holding further
42 hearings, revoke the site plan or take [another] other action necessary to ensure
43 compliance, including imposing civil fines, penalties, stop work orders, and
44 corrective orders under Section 50-41. The Planning Board may obtain
45 investigations and reports as to compliance from appropriate County or State
46 agencies.

47 * * *

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

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51 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council