AGENDA ITEM #8.1
May 18, 2010

Introduction

MEMORANDUM

May 14, 2010

TO: County Council

FROM: Amanda M. Mihill, Legislative Analyst AMihill

SUBJECT: **Introduction:** Resolution to approve comprehensive revisions to the Office of Zoning and Administrative Hearings' Fee Schedule

The District Council is scheduled to introduce a resolution to approve comprehensive revisions to the fee schedule for the Office of Zoning and Administrative Hearings. The proposed revisions generally increase the fee by 10%, except in the following cases:

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

The Council supported these increases as part of the Hearing Examiner's FY11 budget. A public hearing and action on the attached resolution is tentatively scheduled for June 15, 2010 at 1:30 p.m.

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Resolution No.: _____
Introduced: _____
Adopted: _____

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

SUBJECT: Comprehensive Revision to Office of Zoning and Administrative Hearings' Fee Schedule

Background

1. Section 59-H-2.32 of the Montgomery County Code provides for the establishment by resolution of the District Council differential local map amendment filing fees following a public hearing on reasonable notice. Section 59-G-1.12 of the Code requires the Council to set the filing fee for special exception applications filed with the Hearing Examiner.

2. The last general revision to the Office of Zoning and Administrative Hearings' filing fee schedule was approved by the Council on June 19, 2007.

3. The Office of Zoning and Administrative submitted for approval comprehensive revisions to the Office's fee schedule.

4. On {*date*}, the County Council held a public hearing on the proposed revised special exception filing fee schedule.

5. On {*date*}, the County Council reviewed the proposed filing fee schedule.

Action

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 resolution:

> The attached fee schedule is established for filing Local Map Amendment and Development Plan Amendment applications, and special exceptions with the Office of Zoning and Administrative Hearings.

Local Map Amendment/Development Plan Amendment Fee Schedule

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

(2)

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

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

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Office of Zoning and Administrative Hearings Special Exception Filing Fee Schedule

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

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ED & Zoning

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MONTGOMERY COUNTY, MARYLAND

2010 APR -6 PM 12: 31

RECEIVED MONTGOMERY COUNTY COUNCIL

MEMORANDUM

April 6, 2010

TO: County Council

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

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

Fee Increase

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

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

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

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

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

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

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

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

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

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

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

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

cc: Amanda Mihill