

**Public Hearing/Action**

**MEMORANDUM**

June 11, 2010

TO: County Council

FROM: Amanda Mihill, Legislative Analyst *A. Mihill*

SUBJECT: **Public Hearing/Action:** Resolution to approve comprehensive revisions to the Office of Zoning and Administrative Hearings' Fee Schedule

The District Council introduced a resolution to approve comprehensive revisions to the fee schedule for the Office of Zoning and Administrative Hearings on May 18, 2010. 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 on the attached resolution is scheduled for June 15 at 1:30 p.m. Action is scheduled immediately following the public hearing. Barring issues presented during the public hearing, **Council staff recommends approval** of the attached fee schedule.

<u>This packet contains</u>	<u>Circle</u>
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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

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By: District Council

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**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**

<b>Zone Classification</b>	<b>Basic Fee for Designated Acreage or Less</b>	<b>Revised Fee</b>	<b>Additional Fee Per Acre Above Designated Acreage</b>	<b>Revised Fee</b>
<b><u>Residential, One-Family Zones</u></b>				
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
<b><u>Residential, Multi-Family and Mobile Home Zones</u></b>				
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
<b><u>Planned Development Zone</u></b>				
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
<b><u>RMX-Zones</u></b>				
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
<b><u>Commercial Zones</u></b>				
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

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<b>Zone Classification</b>	<b>Basic Fee for Designated Acreage or Less</b>	<b>Revised Fee</b>	<b>Additional Fee Per Acre Above Designated Acreage</b>	<b>Revised Fee</b>
<b><u>Industrial Zones</u></b>				
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
<b><u>Central Business District Zone</u></b>				
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
<b><u>Transit Station Zones</u></b>				
TS-M and TS-R (1 acre)	8,500	9,350	\$ 675	\$ 750
<b><u>Optional Method of Application (Schematic Development Plan)</u></b>				
Supplemental initial filing fee	3,250	3,600		
<b><u>Amendment to Approved SDP</u></b>				
Fee for each initial amendment request following Council approval of prior plan	3,400	3,800		
<b><u>Amendment to Approved Dev. Plan</u></b>				
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		
<b><u>Subsequent Amendments to Pending SDP and DP Amendments</u></b>				
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		
<b><u>Sign(s) to post on property</u></b>				
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**

<b>Special Exception Use</b>	<b>Current Fee</b>	<b>Revised Fee</b>
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
<b>Renewal of Temporary Special Exceptions</b> (major home occupations)	60	60
<b>Modification of existing Special Exception without Public Hearing</b>	None	<i>10% of prevailing SE fee with minimum of \$50</i>
<b>Modification of existing Special Exception with Public Hearing</b>		
No new construction proposed	None	<i>25% of prevailing SE fee</i>
New construction proposed	None	<i>50% of prevailing SE fee</i>
<b>Sign to be posted on property</b> 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

ED of Zoning



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SECRETARY  
MONTGOMERY COUNTY  
COUNCIL  
2010 APR - 6 PM 12: 31

MONTGOMERY COUNTY, MARYLAND

MEMORANDUM

April 6, 2010

TO: County Council

FROM: Françoise M. Carrier *FMC*  
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