

Resolution No.: 17-1249
Introduced: October 14, 2014
Adopted: October 21, 2014

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

By: District Council

SUBJECT: Minor Amendments to Office of Zoning and Administrative Hearings' Rules of Procedure Governing Zoning, Conditional Use, and Board of Appeals Referral Cases

Background

1. The District Council approved a comprehensive revision to the Montgomery County Zoning Ordinance (Zoning Text Amendment 13-04, Ordinance No. 17-43) ("Zoning Ordinance Rewrite") that established new zones, new conditional uses (formerly known as "special exceptions"), and new procedures for applications filed with the Office of Zoning and Administrative Hearings (OZAH). This Zoning Ordinance Rewrite will become effective on October 30, 2014.
2. OZAH's new Rules of Procedure to implement the Zoning Ordinance Rewrite and to govern all OZAH proceedings in zoning matters, conditional use cases, and referrals from the Board of Appeals were approved by the Council on September 9, 2014, in Resolution 17-1210. OZAH's new rules will become effective on October 30, 2014.
3. On September 30, 2014, the Council enacted ZTA 14-09, which made changes in portions of the new Zoning Ordinance that will become effective on October 30, 2014. A few of those changes require minor language changes in OZAH's new Rules of Procedure.
4. The following are proposed changes to OZAH's Rules of Procedure, to conform them to the changes in the new Zoning Ordinance enacted in ZTA 14-09:
 - a. Changes to page references in the table of contents;
 - b. Addition in the Introduction of citations to the Council adoption of OZAH's new Rules of Procedure;
 - c. Change to Rule 10.0(h) to use the new ZTA 14-09 wording for the "metes and bounds" provision in Code Section 59-7.2.1.B.2.f;

- d. Change to Rule 10.1.5.2 to remove the application requirement for an NRI (Natural Resources Inventory) and substitute the ZTA 14-09 language amending Zoning Ordinance §59-7.2.1.B.2.g.v.(b) to require a site and vicinity description with specified elements;
 - e. Changes to Rule 16.0 regarding amendments to Floating Zone Plans (FZPs), development plans (DPs), or schematic development plans (SDPs), by adding language referring applicants to Zoning Ordinance Sections 59-7.7.1.B.5 and 59-7.7.1.C to determine whether a development plan or schematic development plan may be revised pursuant to the Zoning Ordinance in effect when the property was rezoned; and
 - f. Removal of footnote one in Rule 16.3, which would have been confusing in light of changes made in ZTA 14-09, and instead adding a reference to DPs and SDPs in the text.
5. The District Council finds that the Office of Zoning and Administrative Hearings' Amended Rules of Procedure Governing Zoning, Conditional Use, and Board of Appeals Referral Cases attached hereto are consistent with the above-cited provisions of the Montgomery County Code and will effectively implement the Zoning Ordinance Rewrite, as amended in ZTA 14-09.

Action

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

- 1) The attached Amended Office of Zoning and Administrative Hearings' Rules of Procedure Governing Zoning, Conditional Use, and Board of Appeals Referral Cases which govern all proceedings before the Office of Zoning and Administrative Hearings in zoning matters, conditional use cases, and referrals from the Board of Appeals are approved.
- 2) The attached Amended Rules will be effective October 30, 2014.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
RULES OF PROCEDURE FOR ZONING, CONDITIONAL USE & BOARD OF
APPEALS REFERRAL CASES

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INTRODUCTION

Authorizing Laws and Council Resolutions:

The procedures of the Montgomery County Office of Zoning and Administrative Hearings (OZAH) are governed by the following laws:

Maryland Annotated Code, Land Use Article
Montgomery County Code:
Section 2-140 (OZAH's General Powers, Duties and Functions)
Sections 2-113 and 2-113A (Board of Appeals Cases)
Chapter 59 (Zoning Ordinance)

The cited laws are further explained and supplemented by these Zoning Rules of Procedure, adopted by OZAH and approved by the County Council in Resolution No. 17-1210, adopted September 9, 2014. These Zoning Rules of Procedure were modified by the Council subsequently to conform to changes made to the 2014 Zoning Ordinance in ZTA 14-09, enacted by the Council on September 30, 2014, in Ord. No. 17-52.

Application of OZAH's Zoning Rules of Procedure:

The Office of Zoning and Administrative Hearings provides administrative hearings for a number of different types of cases, some of which originate from other agencies of government. These include the County Council, the Board of Appeals, the Commission on Human Rights, the Commission on Common Ownership Communities, the County Executive and the Montgomery County Planning Board. The Hearing Examiner will use these rules to govern zoning, conditional use and Board of Appeals referral cases. These rules will be referred to as OZAH Zoning Rules of Procedure. Additional rules may be adopted to govern non-zoning matters. Currently, non-zoning matters are governed by the referring agency's regulations, the Montgomery County Administrative Procedures Act, County Code, Article 2A or both.

Please consult the Office of Zoning and Administrative Hearings at 100 Maryland Avenue, Room 200, Rockville, Maryland, phone 240-777-6660, for further information and assistance.

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS (OZAH)
RULES OF PROCEDURE FOR ZONING, CONDITIONAL USE & BOARD OF
APPEALS REFERRAL CASES**

RULES GOVERNING ALL APPLICATIONS

1.0 Filing Applications. Applications must be filed at the Office of Zoning and Administrative Hearings in duplicate on forms provided by the OZAH or digitally, if digital forms are provided by OZAH. Applications may be filed between 9:00 a.m. and 4:30 p.m. on days the County is open for business. In addition to the information required by Division 59-7 of the Zoning Ordinance and Rule 10 for Local Map Amendments (LMAs) and Rule 20 for Conditional Uses, below, each application must include:

1.1 Verification of Completeness. Verification from the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission (Planning Department) that the application is complete;

1.2 Electronic Duplicates. Electronic duplicates of all items must be submitted with the application. This requirement includes all plans, diagrams, photographs, statements of operations, pre-hearing statements, expert reports and any subsequent modifications of these submissions. Electronic copies must be submitted on Compact Discs or DVDs, in Microsoft WORD format for text documents, and in PDF format for plans, photos and other non-text documents.

1.3 Filing Fees. Twenty-five percent of the filing fee approved by the District Council must be paid directly to the Planning Department when the application is submitted for verification of completeness. Payment of the remaining 75% of the filing fee and the entire sign fee approved by the District Council must be included with the application when it is filed with OZAH. If an applicant files more than one conditional use application involving the same property, OZAH may, on written request, grant consolidation of cases and payment of only the highest applicable fee.

2.0 Scheduling and Notice.

2.1 Hearing Date. The Hearing Examiner must schedule a public hearing to begin within 120 days of the date the application is filed. The public hearing may be continued or postponed to a date beyond 120 days of the filing date under the Zoning Ordinance and these Rules.

2.2 Posting of Signs. OZAH will provide the required zoning sign to be erected on the subject property by the applicant. The sign must meet the standards in the Zoning Ordinance, and the applicant must pay a Council established sign fee. OZAH will also give each applicant an affidavit of posting form. The applicant must submit a completed affidavit at the public hearing to verify that the posting requirements of the Zoning Ordinance are satisfied;

2.2.1 Signs must remain in place for 10 days after the Hearing Examiner issues the report or decision. If any party requests oral argument before the District Council (for rezonings) or the Board of Appeals (for conditional uses), the signs must remain posted until 30 days after a final decision in the case, including any appeals.

2.2.2 The Hearing Examiner may give the applicant a partial refund of the sign fee if signs are returned in reusable condition within 21 days after a final decision in the case. If the signs are not returned within 21 days, the refund is forfeited.

2.3 Website Posting. Within 15 days after the application is accepted, OZAH will post a copy of the application on its website.

2.4 Hearing Notice.

2.4.1 Within five days after accepting an application, OZAH will mail notice of the public hearing to all adjoining and confronting property owners, any municipality within ½ mile of the property, and civic and homeowners associations within ½ mile of the property. Mailing to a condominium's council

of unit owners satisfies this requirement for condominium developments. If the Hearing Examiner finds an error in the list of persons submitted by the applicant, the Hearing Examiner may require that notice be sent to the correct person. The Hearing Examiner may, in his or her discretion, send notice of the filing to other interested persons, organizations, or agencies.

2.4.2 The names and addresses of current property owners may be obtained or verified from the records of the Maryland State Department of Assessments and Taxation. The names and addresses of civic and homeowners association may be obtained or verified at the Planning Department's "Montgomery Maps" website at <http://mcplanning.maps.arcgis.com>.

2.4.3 The notice must include the date, time, and place of the public hearing, applicant's name and application number, location of property, property size, zone (and requested zone, if applicable), proposed use or density of development when applicable, OZAH's telephone number and website and the Planning Department's website.

2.5 Hearing Calendar. OZAH must publish and regularly update its website with a calendar of cases scheduled to be heard by the Hearing Examiner.

3.0 Pre-hearing Procedures.

3.1 Parties of Record.

3.1.1 Under these Rules, "parties of record" include applicants for a zoning action or a conditional use, individuals and organizations testifying at an OZAH public hearing and those who have requested and been approved by the Hearing Examiner to be parties of record. Anyone may testify at the OZAH public hearing and will be automatically considered a party of record. Testifying before the Planning Board or other agency does not make a person a party of record to an OZAH proceeding.

3.1.2 Persons who do not wish to testify may request to be classified as a party of record by filing a written request, signed by the individual or an authorized agent, and demonstrating that other parties of record will not adequately represent the interests of the person or organization seeking to become a party of record.

3.1.3 All parties of record must provide contact information, including an address, telephone number and email account.

3.1.4 Being designated or not designated as a party of record as defined in these Rules does not determine a person's right to appeal to the courts or to request oral argument before the Council or the Board of Appeals. The person's right to appeal or request oral argument is governed by the Zoning Ordinance and by state law.

3.2 Participants. Participants are those persons who submit written comments on an application for consideration in the record, but who are not parties of record.

3.2.1 Participants are not required to mail copies of their written submission(s) to other participants or to parties of record; nor will other participants or parties of record be required to send copies of motions, orders, or other submissions directly to participants who are not parties of record. However, all submissions will be available for public viewing in the case file maintained by OZAH.

3.2.2 OZAH will not send individual notice of hearings to participants unless they are adjoining or confronting property owners, civic and homeowners associations or municipalities within 1/2 mile of the subject site; nor will OZAH send participants a copy of the Hearing Examiner's report and recommendation to the Council or decisions in conditional use cases. Copies of such reports and recommendations and decisions will be available for viewing on OZAH's website and at OZAH's office.

3.2.3 All submissions made by participants must be in writing and signed by the individual or an authorized representative.

3.2.4 Signed, written comments timely submitted to OZAH by participants will be considered in evaluating the case, but not necessarily given the same weight

as statements that are made under oath and subjected to cross-examination at the hearing.

3.3 Representation. Groups, organizations or entities arguing a matter or calling witnesses before OZAH must be represented by an attorney, but a member of an organization, authorized by that organization to do so, may offer testimony in narrative form on behalf of the organization without attorney representation. Individual members of organizations may also offer testimony in narrative form on their own behalf, without attorney representation.

3.4 Applicant's Pre-hearing Submission. The applicant must file a pre-hearing statement at OZAH, in duplicate, no later than thirty days before the hearing date. The applicant must also provide copies to all parties of record and the Planning Department. An electronic copy must also be provided to OZAH at the same time. The statement must include the following information:

- 3.4.1 a statement of the grounds for approving the application;
- 3.4.2 copies of all reports intended to be introduced at the hearing;
- 3.4.3 the names of all experts expected to testify at the hearing, their resumes, and a summary of expert testimony which will be proffered at the hearing;
- 3.4.4 identity of all other witnesses who will testify; and
- 3.4.5 estimated time required for presentation.

3.5 Opposition's Pre-hearing Submission. Persons or associations represented by counsel or intending to appear in organized opposition to an application must also file a pre-hearing statement containing the same information and copies required in Rule 3.4, no later than twenty days before the date of hearing. Nothing in this section is intended to limit the rights of individual members of the public to testify during the hearing or to submit pertinent written materials at any time while the record remains open for that purpose.

- 3.6 Additional Pre-Hearing Submissions. Nothing in Rules 3.4 and 3.5 limits the authority of the Hearing Examiner to require additional submissions or responses as necessary, to ensure completeness and fairness of the hearing process.
- 3.7 Discovery. In addition to the pre-hearing statements required by these rules, the Hearing Examiner may require the parties, before or during the hearing, to exchange evidence to be introduced at the hearing, in cases where the Hearing Examiner determines that circumstances warrant such an exchange. The Hearing Examiner may impose sanctions under Rule 5.0 if a party fails to exchange evidence as ordered. Formal discovery is not permitted in zoning and conditional use cases.
- 3.8 Subpoena Requests. Subpoena requests must be submitted to the Hearing Examiner at least 14 days before the scheduled public hearing and with sufficient time for the person to be served. Each subpoena request must identify the name and address of the person to be subpoenaed and identify any documents to be produced. Requests must also include a statement explaining why the witness's testimony or documents requested are relevant to the case. In the case of witnesses who are state or county employees, the Hearing Examiner will first attempt to secure their attendance on a voluntary basis. If necessary, the Hearing Examiner may issue an Order authorizing a party to apply to a court with jurisdiction to issue a subpoena for the deposition of an out-of-state witness.
- 3.9 Motions.
- 3.9.1. Procedural motions must be made promptly and, if possible, before the public hearing; however, nothing will preclude the Hearing Examiner from reaching a determination on any preliminary or procedural matter as the interests of justice may require, without a hearing. If made before the public hearing begins, motions must be sent to all parties of record and must include a certification of the date mailed. Responses to motions must be made within 10 days of the date of mailing certified on the motion.

3.9.2 Motion for Summary Disposition. Any party of record may file a motion to summarily address any issue in a case on the grounds that the application and other supporting documentation establish that there is no genuine issue of material fact to be resolved at a fact-finding hearing regarding that issue. The motion must be supported by documents, affidavits, applicable precedent, or other appropriate materials. Any such motion must be made at least 30 days before the scheduled hearing date, and any opposition must be made within 10 days of the date of mailing certified on the motion. Any party of record may request to have argument before the Hearing Examiner on the merits of the motion. In the case of any matter that requires Council action, the Hearing Examiner will issue a recommendation regarding disposition of the issue in question as part of the final report and recommendation to the Council.

3.10 Public Access to Records. OZAH will maintain the record of all applications. Such records will be available for public inspection between the hours of 9:00 a.m. and 4:30 p.m., on days the County is open for business. All parties in a case will be expected to know the contents of the record and should periodically inspect it. Persons seeking to review current applications are encouraged to make an appointment with OZAH to ensure availability of the file. Copies of reproducible documents of record will be provided by OZAH upon request at a fee established separately. The record in any completed case may also be examined at OZAH if the person seeking examination provides reasonable notice to OZAH to permit retrieval of the file.

4.0 Hearings.

4.1 Time, Location and Testimony. A transcribed public hearing for the purpose of taking evidence will be held when and where the Hearing Examiner designates. Testimony must be under oath and will be subject to cross-examination. Copies of transcripts will be posted on OZAH's website until the record closes.

4.2 Authority of Hearing Examiner. The Hearing Examiner must inquire fully into the facts in order to make a complete record in a timely manner. For all cases heard, the authority of the Hearing Examiner is as follows:

- 4.2.1. administer oaths;
- 4.2.2 grant or deny applications for subpoenas;
- 4.2.3 rule on petitions to revoke subpoenas;
- 4.2.4 rule upon offers of proof and receive relevant evidence;
- 4.2.5 regulate the course of the hearing;
- 4.2.6 hold conferences for simplification of the issues;
- 4.2.7 rule on procedural requests, motions, or similar matters and to order hearings reopened, or consolidated;
- 4.2.8 call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;
- 4.2.9 if warranted, in the Hearing Examiner's opinion, visit the site which is the subject of the application. The site visit must be open to the public and conducted under the following procedures:
 - 4.2.9.1 The parties may submit a listing of those specific areas on the site they wish the Hearing Examiner to view;
 - 4.2.9.2 The Hearing Examiner must provide reasonable notice of the time and place of the site visit, but notice need not be in writing if announced at a public hearing.
 - 4.2.9.3 In advance of the site visit, the Hearing Examiner must identify those portions of the site and the surrounding area that will be viewed.
 - 4.2.9.3 Parties of record and their representatives, and members of the public, may be present to observe, but no testimony may be taken.

- 4.2.9.4 The Hearing Examiner must either (1) issue written findings of fact relating to the site visit or (2) announce these findings on the record of the public hearing before the close of the record of the case, giving the parties of record an opportunity to respond.
 - 4.2.10 waive minor procedural defects or errors that do not affect substantive rights of the parties of record in order to proceed on the merits;
 - 4.2.11 ask parties of record to submit proposed findings of fact and memoranda of law;
 - 4.2.12 request the parties of record at any time during the hearing to state their respective positions concerning any issue in the case or theory in support of it;
 - 4.2.13 exercise all additional powers included in Section 2A-8 of the Montgomery County Code;
 - 4.2.14 maintain orderly conduct of the public hearing; and
 - 4.2.15 take any other action authorized under these rules.
- 4.3 Technical Assistance. For assistance in reaching a decision or recommendation in each case, as applicable, the Hearing Examiner may request technical services, advice, data or factual evidence from the Planning Board, the Planning Department, the County Attorney, other agencies of the County government, or other sources. Any information that is relied upon by the Hearing Examiner in reaching a decision or recommendation must be referenced in the public record.
- 4.4 Rules of Evidence. The Hearing Examiner may admit and give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence that appears to be reliable in nature. The Hearing Examiner must follow the rules of privilege recognized by law, and may exclude incompetent, unreliable, irrelevant or unduly repetitious evidence. The Hearing Examiner may produce evidence when necessary. The Hearing Examiner may take official notice of commonly known facts,

facts within the Examiner's administrative expertise or documents or matters of public record. Parties of record must be notified of any officially noticed fact while the record in the case is open and must be given an opportunity to contest the facts so noticed.

4.5 Cross-Examination. Every party will have the right of reasonable cross-examination of witnesses who testify, and will have the right, upon request to the Hearing Examiner, to submit rebuttal evidence. Cross-examination will be subject to reasonable regulation by the Hearing Examiner, and the Hearing Examiner will not permit repetitious questions and examination on irrelevant matters.

4.6 Demonstrative Evidence. Demonstrative evidence may be submitted if it can be reasonably included in the record. An electronic copy of all exhibits must be provided by the party submitting the exhibit.

4.7 Order of Presentation, Public Hearings. The ordinary, but not mandatory, order or procedure for the conduct of the hearing and the presentation of evidence is as follows, unless waived or changed by the Hearing Examiner or by law:

4.7.1 Disposition of all outstanding preliminary motions and preliminary matters.

4.7.2 Opening statement of parties.

4.7.3 Presentation of factual case of appellant: cross-examination of all witnesses thereof.

4.7.4 Presentation of factual case of responding party: cross-examination of those witnesses.

4.7.5 Presentation of factual case of other interested persons: cross-examination of those witnesses.

4.7.6 Rebuttal evidence of appellant: cross-examination of those witnesses.

4.7.7 If permitted by the Hearing Examiner under the circumstances of the particular case, surrebuttal evidence of a responding party: cross-examination of those witnesses.

4.7.8 Closing arguments.

4.8 Continuance of Hearing.

4.8.1 A hearing may be continued without additional written notice if the date, time and place of the next hearing are announced at a public hearing. If a continued hearing date is not announced at a public hearing, the Hearing Examiner must give at least 10 days notice to all parties of record before the next scheduled hearing date. If extraordinary circumstances make such notice impossible, then the Examiner may provide less than 10 days notice.

4.8.2 The Hearing Examiner may postpone or continue a hearing at any time if the Hearing Examiner finds that a pending draft master plan, plan amendment, highway plan, capital improvement program, zoning or planning study, zoning text amendment, court case or other relevant matter may substantially affect the application under consideration.

4.8.3 If requested by a party of record for good cause shown, the Hearing Examiner may postpone a public hearing. Requests for postponement of a public hearing must be submitted at least 15 days before the hearing unless extraordinary circumstances require a shorter time. All requests for postponements must be made in writing with copies delivered to all parties of record.

4.8.4 If a hearing is postponed indefinitely at the applicant's request, the Hearing Examiner must issue a notice of any rescheduled hearing date to all persons entitled to notice of the original hearing and to any parties of record. Notice must be mailed at least 15 days before the new hearing date.

4.9 Recording of Hearing. Any person wishing to videotape, televise, photograph, broadcast or record a hearing must obtain permission from the Hearing Examiner. The Hearing Examiner will grant permission unless the activity will be disruptive to

the proceedings. No recording made under this rule, or a transcript of a recording, will be part of the official record in a case.

4.10 Closing of Record. The record in each case will close after receipt of all evidence. The time for closing the record may occur at the conclusion of a hearing, or may be set for a time certain after the conclusion of the hearing, if the Hearing Examiner finds that additional information or government action is necessary on any relevant issue, or a party of record requests a delay for good cause. The Hearing Examiner may also reopen the record to receive additional evidence, receive further evaluation of the application by appropriate government agencies, or to take official notice of documents or records; however, the reopening of the record must not unduly delay consideration of the application.

5.0 Sanctions. The Hearing Examiner may impose any sanction authorized by the Administrative Procedures Act (§2A-8(j)) for failure to comply with these rules or for unexcused delays or obstructions to the pre-hearing and hearing process. Such sanctions may include suspension or continuance of scheduled hearings, denial of admission of documents and exhibits, admission of matters as adverse to a defaulting party, assessment of costs, dismissal of conditional use applications, and recommendation of dismissal of cases requiring a decision by the District Council. Applicants who fail to appear at a scheduled hearing may be assessed costs associated with the hearing. If any assessed costs are not paid, an enforcement order may be referred by the Hearing Examiner to the County Attorney for collection.

6.0 Time Periods. All time periods in these Rules will be calculated under §59-1.4.1 of the Zoning Ordinance.

7.0 Notification of Reports and Decisions. The Hearing Examiner must notify the applicant and all parties of record that the report or decision in a case is complete and available for review.

- 7.1 The notice must briefly state whether the application was approved, denied, or recommended for approval or denial;
- 7.2 For conditional uses, notice must also be sent to all persons entitled to notice of the original hearing, any additional parties of record, and the Board of Appeals. Notice of decisions on conditional uses must list any conditions of approval;
- 7.3 The notice must inform recipients that the report or decision is available for review both at OZAH's office between 9:00 am and 4:30 pm on days the County is open for business and on OZAH's website; and
- 7.4 The notice must inform the recipients of right to request oral argument before the Board of Appeals or the District Council, whichever is applicable, and that any such request must be made within 10 days from the date the Hearing Examiner's decision or report and recommendation is issued.

8.0 Compliance and Enforcement. Upon notification from the Department of Permitting Services (DPS) that a property governed by a floating zone plan or a conditional use does not comply with the binding elements or terms and conditions of approval, the Hearing Examiner must hold a show cause hearing to determine whether development on the property conforms to the floating zone plan or conditional use, as applicable, and whether sanctions should be assessed. No public hearing is required if the complaint is withdrawn or the alleged noncompliance is corrected to the satisfaction of DPS.

8.1 Notice. Notice of the show cause hearing must be sent to the property owner (by certified mail), to DPS, to the Planning Department, and to any party who submitted a written complaint concerning a conditional use. Notice of a show cause hearing for alleged violations of a floating zone plan must also be sent to the parties of record in the original proceeding which determined the floating zone plan and must be posted on OZAH's website for 30 days before the show cause hearing to provide public notice. Notice of the hearing must include:

8.1.1 The date, time and place of the show cause hearing;

- 8.1.2 A brief description of the alleged violation of the floating zone plan or conditional use, as applicable;
 - 8.1.3 A statement that the public hearing is limited to consideration of the violations alleged by DPS concerning the floating zone plan or conditional use requirements, as applicable; and
 - 8.1.4 Notice to the person allegedly in violation that failure to appear may result in sanctions, including a reversion to the previous zone applied before the floating zone, or revocation of the conditional use, as applicable.
- 8.2 Official Notice. The Hearing Examiner must take official notice of the entire record of the Local Map Amendment that approved the floating zone plan or the entire record of the conditional use, as applicable.
- 8.3 Order of Presentation. The order of presentation at a show cause hearing is:
- 8.3.1 DPS presents its evidence of alleged non-compliance;
 - 8.3.2 The person alleged to be in violation presents evidence in support of its case;
 - 8.3.3 Any other persons wishing to present evidence;
 - 8.3.4 DPS rebuttal evidence;
 - 8.3.5 Property owner surrebuttal;
 - 8.3.6 Surrebuttal from any other person who presented evidence; and
 - 8.3.7 Closing arguments.
- 8.4 Show Cause Hearings. All other rules governing public hearings, including pre-hearing procedures, apply to the show cause hearing. Pre-hearing statements must be served on all parties and must include all exhibits to be relied on at the public hearing.
- 8.5 Decisions in Floating Zone Compliance Cases. In floating zone plan compliance cases, the Hearing Examiner must issue a report and recommendation to the District Council within 30 days of the close of the record of the show cause hearing. The

Hearing Examiner may by order extend the time for issuing the report by an additional 30 days; any further extensions require approval by the District Council. The Hearing Examiner must determine whether the property owner has failed to comply with a binding element and whether any such failure merits sanctions, including reversion to the previous zoning category. Copies of the report and recommendation must be transmitted to the property owner, DPS, the Planning Director, and any complaining parties.

- 8.6 Decision in Conditional Use Compliance Cases. In conditional use enforcement cases, the Hearing Examiner must make a determination on the issues presented within 15 days after the close of the record. The Hearing Examiner may by order extend the time for issuing the determination. Copies of the determination must be transmitted to the conditional use holder, the property owner, DPS, the Planning Director, and any complaining parties. The Hearing Examiner may reaffirm or revoke the conditional use or amend, add to, delete or modify the existing terms or conditions.

ADDITIONAL RULES GOVERNING LOCAL MAP AMENDMENTS .

- 9.0 Applications. Applicants for Local Map Amendments must submit four sets of their applications and documents to the Planning Department for its assessment and certification of completeness. Twenty-five percent of the filing fee approved by the District Council must be paid directly to the Planning Department when the application is submitted for verification of completeness. Payment of the remaining 75% of the filing fee and the entire sign fee approved by the District Council must be included with the application when it is filed with OZAH. Once Planning Department Staff certifies completeness of the application, the applicant must file the Planning Department's written certification of

completeness, the original application and the required fees with the OZAH, which will accept the application and establish a hearing date. OZAH will maintain the original certified application and the file; three complete copies of the application will be retained by Planning Department Staff for its review and recommendation on the merits.

10.0 Contents of Applications. Applications for Local Map Amendments must include the following:

- a) The application must show the name and address of the applicant, lot and block and/or subdivision, address of the property, tax account number(s), the election district, the present zoning, and the requested new zone. If the applicant is not the owner, the applicant must submit documents showing the applicant's authorization to file the application. The application must include a *notarized statement* listing rezoning denials in the past three years, or stating there were none.
- b) The identity of each person who has a substantial interest in the property under the application, including any person with a share in the property amounting to 5% or more (whether held in an individual or corporate capacity) of the full cash value of the property after subtracting all mortgages, deeds of trusts, liens, and encumbrances. The application must also contain the names of any contract purchaser or person holding a mortgage, deed of trust, or option to purchase the property.
- c) A statement disclosing political contributions to the treasurer or political committee of any candidate for County Council and County Executive or slate that contributes to candidates for County Council or County Executive, made by any person that is a title owner or contract purchaser of land that is the subject of an

application, a trustee who has an interest in land that is the subject of an application, excluding trustees described in a mortgage or deed of trust; or a holder of 5 percent or greater interest in a business entity who has an interest in land that is the subject of an application. The applicant must submit the disclosure statement on a form approved by the District Council.

- d) A statement explaining how the proposed development satisfies the criteria specified in the Zoning Ordinance to grant the application. The applicant's statement should also describe how the proposed plan complies with any existing approvals and contain a summary of proof..
- e) A list of the owners of properties adjoining and confronting the subject property and a list of civic organizations and homeowners associations within a half mile of the site. If an adjoining or confronting property is a condominium, the applicant must provide the name and address of the Council of Unit Owners.
- f) Certified copy of official zoning vicinity map showing the highlighted subject property and the area within at least 1,000 feet surrounding the subject property;.
- g) An Identification Plat, signed, dated and stamped by a licensed engineer or surveyor, highlighting the subject property and demonstrating that the plat acreage matches the acreage shown on the application.
- h) A description by metes and bounds, courses and distances of land or, if the boundaries conform to lot boundaries within a subdivision for which a plat is recorded in the land records of the County, then the lot, block, and subdivision designations with appropriate plat reference..

10.1 For a Floating zone, the application must have a Floating Zone Plan depicting:

- 10.1.1 building location, density, massing, height, and anticipated use;
- 10.1.2 locations of open spaces and preliminary stormwater management strategy;
- 10.1.3 pedestrian, bicycle, and vehicular circulation, parking, and loading;
- 10.1.4 any binding element proposed for the application. An applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development standards, development program, or use that will be applicable to the property if the District Council approves the application; and
- 10.1.5 the following additional information:
 - 10.1.5.1 current and proposed zone;
 - 10.1.5.2 a plan certified by a licensed professional, showing existing site conditions and vicinity within 100 feet, including total tract area; existing topography; watershed in which the site is located; Special Protection or Primary Management areas; any floodplain, wetland, or perennial or intermittent stream, and any associated buffers; whether or not rare, threatened or endangered species were observed on the property; whether or not the property is on the Locational Atlas and Index of Historic Sites; the aerial extent of forest and tree cover on the property; and date(s) field work was conducted;
 - 10.1.5.3 existing or approved adjacent land uses, buildings, and rights-of-way;
 - 10.1.5.4 a traffic study under the Planning Board's LATR Guidelines if the incremental increase in vehicular peak-hour trips between the density of the base zoning and the density of the requested floating zone meets the minimum applicability requirement in the LATR Guidelines; and
 - 10.1.5.5 general phasing of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications.

10.2 For a Euclidean zone application, exhibits showing:

a) the subject property and the proposed neighborhood, identifying uses and zoning; and

b) an explanation of the changes that have occurred in the neighborhood since the original zoning or previous comprehensive rezoning, or evidence of the alleged mistake made by the District Council in the previous Sectional or District Map Amendment, in support of the requested Euclidean zone.

11.0 Modifications to Local Map Amendment Applications. An applicant may modify an Local Map Amendment application as a matter of right until 10 days before the public hearing. Thereafter, amendments to Local Map Amendment applications must be requested by motion, filed with the Hearing Examiner in hard copy and electronic copy, and served on the Planning Department and all parties of record. Such motions must be made no later than 15 days before the record closes. Modifications to applications must include a description, in written text, of all changes made to the application, and revised plans, if any. The Hearing Examiner must keep the record open for at least 15 days after any such modification to allow other parties, the Planning Department and the Planning Board an opportunity to respond.

11.1 The Hearing Examiner must provide notice of any modification to a local map amendment application that requests an increase of the land area or a change of the zoning classification originally requested, following the procedures applicable to an original application contained in Rule 2.0, including alterations of the posted sign to reflect the modified request.

11.2 The applicant must submit electronic copies of all materials submitted with the modified application.

12.0 Reports. The Hearing Examiner must issue a report and recommendation to the District Council within 45 days of the date the record of the public hearing closes. This time may

be extended for an additional 45 days by the Hearing Examiner. Thereafter, 45-day extensions of the time to issue the report must be made with District Council approval.

13.0 Withdrawal of application. The Hearing Examiner may permit an applicant to withdraw an application at any time prior to issuance of his/her report on the application.

14.0 Refunds of Filing Fees. The District Council may refund or waive all or part of a filing fee for the following reasons:

14.1 The public hearing has not commenced;

14.2 The public hearing has commenced, but a master plan, sector plan, sectional map amendment, or zoning text amendment that materially affects the property is approved, or condemnation proceedings or public acquisition of the subject property has been initiated, in the last ninety (90) days; or

14.3 The applicant demonstrates that undue hardship will result if the refund is not approved.

14.4 The Hearing Examiner may refund all or a portion of filing fees of less than \$25,000, if an applicant demonstrates that any of the conditions listed above have been met.

15.0 Dismissal. The Hearing Examiner may recommend that the District Council dismiss an application if:

15.1 The application has been pending for 2 years or longer; and

15.2 The applicant has not actively pursued the application;

15.3 The Hearing Examiner must notify the applicant of contemplated dismissal at its last known address at least 30 days before issuing a recommendation to dismiss the case.

- 15.4 The District Council may dismiss the application unless the applicant demonstrates good cause that the application should not be dismissed.
- 16.0 Major Amendments to Previously Approved Floating Zone Plans. A request to increase the density or height, decrease a setback, add a new use, or modify any binding element of a previously approved floating zone plan must follow the same procedures applicable to a local map amendment application. Applicants who have a Development Plan (DP) or Schematic Development Plan (SDP) approved prior to October 30, 2014, through a Local Map Amendment may apply, until October 30, 2039, for amendments to their DP or SDP under the procedures in effect on October 29, 2014 (*i.e.* under the pre-2014 Zoning Ordinance), if they meet conditions spelled out in Sections 59-7.7.1.B.5. and 59-7.7.1.C of the 2014 Zoning Ordinance. In addition to the items required to be included in an original application, the major amendment application must also include:
- 16.1 the date and resolution number of the original approval.
- 16.2 The currently approved Floating Zoning Plan (FZP), Development Plan (DP) or Schematic Development Plan (SDP).
- 16.3 The proposed amended FZP, DP or SDP.
- 16.4 A “redline” version of the proposed amended FZP (or proposed amended DP or SDP, if footnote 1 applies), highlighting the changes proposed from the current FZP, DP or SDP.
- 17.0 Recording Procedures. If a floating zone plan contains any binding elements, the applicant must file an executed covenant stating that use of the property will conform to the binding elements included on the development plan prior to the close of the record. The covenant must include a legal description of the property, the Local Map Amendment case number,

the name of the applicant and the existing property owner, and state that a copy of the development plan is on file with the Planning Department and OZAH. The covenant must be in a form acceptable for filing in the land records, and in a format supplied by the Hearing Examiner.

17.1 If the floating zone plan is approved, the applicant must file an executed covenant, identical to the one submitted into the administrative record, in the land records of Montgomery County.

17.2 Within 10 days after the District Council's resolution approving the floating zone plan, the applicant must submit an original and three copies of the floating zone plan to the Hearing Examiner for certification. The floating zone plan must include a certification block and any other information required by OZAH and in a format approved by OZAH.

17.3 The applicant must provide a copy of the floating zone plan certified by the Hearing Examiner to the Planning Department.

17.4 OZAH must publish an electronic copy of the approved floating zone plan on its website and maintain a copy in its files.

18.0 Oral Argument. Any party of record or aggrieved party may request the District Council to grant oral argument before the District Council in accordance with Zoning Ordinance §59-7.2.1.D.3.c. If oral argument is granted, the District Council may direct inquiries to the participants and the Hearing Examiner during oral argument about matters of record.

19.0 Decision on Local Map Amendments. The District Council's procedures regarding its decisions on Local Map Amendment applications are in Zoning Ordinance §59-7.2.1.E and F, and in the Council's own rules.

ADDITIONAL RULES GOVERNING CONDITIONAL USES

20.0 Applications. Applicants for Conditional Uses must submit four sets of their application and documents to the Planning Department for its assessment and certification of completeness. Twenty-five percent of the filing fee approved by the District Council must be paid directly to the Planning Department when the application is submitted for verification of completeness. Payment of the remaining 75% of the filing fee and the entire sign fee approved by the District Council must be included with the application when it is filed with OZAH. Once Technical Staff certifies completeness of the application, the Applicant must file the certified original and fees with the OZAH, which will accept the application and establish a hearing date under Section 59-7.3.1.C. of the Zoning Ordinance. OZAH will maintain the original certified application and the record of the case; three complete copies of the application will be retained by M-NCPPC Technical Staff for its review and recommendation.

21.0 Contents. Applications for Conditional Uses must include the following:

21.1 Completed Application and Fees as approved by the Council;

21.2 Proof of ownership or authorization to proceed (If the applicant is not the owner of the property involved, the lease, rental agreement, contract to purchase, or written authorization to proceed on government land, by which applicant's legal right to prosecute the petition is established);

21.3 Statement of how the proposed development satisfies the criteria to grant the application. These criteria include the requirements of the Zoning Ordinance, as well as a showing of how the proposed development is consistent with the

requirements of any other approval affecting the property. The Applicant's Statement should also contain a summary of what the applicant expects to prove.

- 21.4 Certified copy of official zoning vicinity map showing the highlighted subject property and the area within at least 1,000 feet surrounding the subject property;
- 21.5 List of the owners of all properties adjoining and confronting the subject property listed in the records of the Maryland State Department of Assessments and Taxation. If an adjoining or confronting property is a condominium, the applicant must provide the name and address of the Council of Unit Owners;
- 21.6 List of any civic and homeowners associations within a 1/2 mile of the subject site;
- 21.7 Traffic Statement or Study, accepted for review by the Planning Director;
- 21.8 Map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
- 21.9 Existing and proposed dry and wet utility plan if changes to these facilities are proposed;
- 21.10 Written description of operational features of the proposed use, including hours of operation, number of anticipated employees, occupants and clientele, equipment involved, and any special conditions or limits which the applicant proposes;
- 21.11 if exterior changes are proposed, plans of the proposed development showing:
 - 21.11.1 footprints, ground-floor layout, and heights of all buildings and structures;
 - 21.11.2 required open spaces and recreational amenities;
 - 21.11.3 layout of all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;

- 21.11.4 rough grading;
 - 21.11.5 landscaping and lighting;
 - 21.11.6 approved Natural Resources Inventory/Forest Stand Delineation, if required under Chapter 22A;
 - 21.11.7 Forest Conservation Plan application, if required under Chapter 22A, or an approved preliminary forest conservation plan; telecommunication tower applications must include an approved Forest Conservation Plan or a letter from the Planning Department confirming that a Forest Conservation Plan is not required under Chapter 22A;
 - 21.11.8 Stormwater Management Concept or Water Quality Plan application, if required under Chapter 19; and
 - 21.11.9 supplementary documentation showing or describing how the application satisfies previous approvals and applicable requirements.
- 21.12 Development program and inspection schedule detailing any construction phasing for the project;
- 21.13 For a telecommunication tower application, photographic simulations of the tower and site seen from areas with a direct view of the tower, including a minimum of at least 3 directions; and
- 21.14 All additional exhibits which the applicant intends to introduce.

22.0 Modifications to the application. Applicants may modify a conditional use application before the public hearing by filing a motion to amend the application with the Hearing Examiner. The motion to amend must identify all changes requested to the original or previous application. The Hearing Examiner must issue notice of the motion to amend to all individuals entitled to notice of the original application and to the Planning

Department. The Hearing Examiner may not grant the motion until 10 days after issuance of the notice.

22.1 The Hearing Examiner must leave the record open for a maximum of 30 days from the date of the motion to amend in order to provide an opportunity for the Planning Board or its staff to comment.

22.2 If the Hearing Examiner determines that the amendment would materially alter the applicant's proposal or the evidence to be submitted at the hearing, the Hearing Examiner may postpone the hearing to a date that permits time for all interested persons to review the amendment.

22.3 No written notice is required for amendments made during a public hearing.

23.0 Refunds of Filing Fees. Upon written request, the Hearing Examiner may refund all or a portion of filing fees paid to OZAH for a conditional use application under the following schedule:

23.1 90% of the filing fee if the application is withdrawn within 48 hours after it is accepted for filing;

23.2 50% of the filing fee if the application is withdrawn at least 30 days before the scheduled public hearing; or

23.3 All or a portion of the filing fee if an action of the County Executive, County Council or an administrative board or agency resolves or moots the issues pending in the case, whether or not a public hearing has been held.

24.0 Decisions. The Hearing Examiner must issue a report and decision in the case within 30 days after the record closes. The Hearing Examiner may by order extend the time for issuance of the report and decision.

25.0 Major Amendments to Conditional Uses. Major amendments to previously approved conditional uses are defined in §59-7.3.1.K.1.a. of the Zoning Ordinance.

25.1 Major amendments to approved conditional uses must follow the same procedures and meet the same standards as the original conditional use, except:

25.1.1 The public hearing must be limited to consideration of the proposed modifications and those aspects of the conditional use affected by the modification;

25.1.2 The Hearing Examiner may require the underlying conditional use to satisfy the current requirements of the applicable zone to the extent necessary to avoid substantial adverse impacts on the neighborhood.

26.0 Minor Amendments to Conditional Uses. Minor amendments to previously approved conditional uses are defined in §59-7.3.1.K.2.a. of the Zoning Ordinance.

26.1 The Hearing Examiner may approve a minor amendment to a conditional use originally decided by the Hearing Examiner.

26.2 A minor amendment may be approved administratively by the Hearing Examiner:

26.2.1 The Hearing Examiner must send a copy of the decision approving the minor amendment to the applicant, the Planning Board, DPS, the Department of Finance, all parties entitled to notice at the time of the original filing, and current adjoining and confronting property owners

26.2.2 The decision must state that any person may request a public hearing on the Hearing Examiner's approval within 15 days after the date the notice is issued.

26.2.3 The decision must state that the official file on the original conditional use and the amendment is available for review at OZAH.

26.2.4 All requests for a public hearing must be in writing and signed, and must specify the reason for the request and the nature or relief desired.

26.3 Upon receipt of a request for hearing, the Hearing Examiner must issue an order suspending approval and schedule public hearing solely on whether the amendment is a major or minor amendment. Notice of this limited public hearing must be sent to all those entitled to receive the decision approving the minor amendment. If Hearing Examiner determines that the proposed amendment is likely to substantially

change the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood, then the amendment application must be treated as a major amendment application.

- 26.4 The Hearing Examiner must issue a decision on whether the amendment is major or minor within 15 days after the close of the record of the hearing. The Hearing Examiner may, by order, extend the time for issuing that decision.
- 26.5 Notice of the Hearing Examiner's decision must be sent to all parties of record and the Planning Department. The notice shall include a statement that the decision is appealable to the Board of Appeals based on the Hearing Examiner's record.
- 26.6 If the Hearing Examiner determines that the amendment requested is a major amendment, the amendment must follow the procedures governing major amendments.