



Montgomery County Government

A DESCRIPTION AND EVALUATION OF THE MONTGOMERY COUNTY BOARD OF APPEALS

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SUMMARY OF MAJOR CONCLUSIONS AND RECOMMENDATIONS

This report describes and evaluates the operations of the Montgomery County Board of Appeals (BOA) and concludes that:

- Montgomery County citizens continue to support the Board of Appeals (BOA) as a Council-appointed citizen board authorized to hear and decide variances, special exceptions, and administrative appeals based upon guidelines and conditions set forth in County law.

- Over the years, however, the operations of the BOA and management of the BOA office have not changed sufficiently to accommodate an increased workload, and the laws and rules of procedure governing the BOA have not been kept up-to-date or internally consistent.

- In order to maintain community confidence in the BOA as the appropriate body to resolve variances, special exceptions, and administrative appeals, changes are required to accommodate the BOA's increased workload and to minimize problems with the routine operations of the BOA.

Recommendations to address the specific problems outlined in the evaluation include:

- Allocate additional resources for the BOA office, including a new staff position and increased use of automation;

- Expand the role and increase the compensation of the BOA's Chair;

- Simplify the process for uncontested variances and make greater use of the BOA's authority to refer cases to the Office of Zoning and Administrative Hearings in order to alleviate the BOA's workload;

- Provide additional legal assistance for the BOA from the County Attorney's office consistent with guidelines to minimize perceived conflict of interest;

- Transfer primary responsibility of drafting BOA opinions from BOA members to staff;

- Improve the timeliness of technical staff assistance to the BOA from the Planning Commission;

- Change the BOA's hearing day so that it no longer conflicts with Planning Board meetings;

- Undertake a technical review and update of the BOA's laws and Rules of Procedure to make them consistent and clearly understandable; and

- Develop better written information for the public that explains the BOA's statutory role and functions.

I. AUTHORITY, SCOPE AND METHODOLOGY

A. Authority. Council Resolution No. 11-97, Subject CY 1987 Work Program of the Office of Legislative Oversight (OLO), adopted February 24, 1987.

B. Scope. This report evaluates the operations of the Montgomery County Board of Appeals (BOA). Specifically, it evaluates the laws and rules governing the BOA, staff resources supporting the BOA, changes in the BOA's workload, routine practices of the BOA, and public perceptions of the BOA. Except for reviewing the frequency and outcome of appeals of BOA decisions to the courts, the scope of this report does not include evaluating the substance of specific cases or BOA decisions.

C. Methodology. This project was conducted by Karen Orlansky, OLO Program Evaluator, with assistance from Johanna Ettl, Public Administration Intern, during May-September 1987. It involved document and file reviews, interviews, and observations. OLO received full cooperation from all parties.

Information was obtained from the State Attorney General's Office and the following County government departments and offices: Department of Animal Control, Department of Environmental Protection, Department of Finance, Department of Fire and Rescue Services, Department of Housing and Community Development, Ethics Commission, Human Relations Commission, Merit System Protection Board, Office of the Board of Appeals, Office of the County Attorney, Office of the County Council, Office of Management and Budget, Office of Zoning and Administrative Hearings, Personnel Office, and the Property Tax Assessment Board. Interviews were also conducted with members of the Montgomery County Planning Board and staff of the Montgomery County Planning Commission, and current and previous members of the BOA. Representatives from the City of Rockville, Prince Georges County, Anne Arundel County, Howard County, and Baltimore County also contributed to the report.

Feedback from the citizens of Montgomery County was obtained through over 60 interviews with lawyers, representatives of civic associations, and individual citizens who have appeared before the BOA. The research design included interviews with those who appear frequently before the BOA, as well as a sample of 35 individuals who have appeared only once or twice before the BOA during the past year.

II. DEFINITIONS

Unless otherwise indicated, all code sections cited in this report are references to the Montgomery County Code 1986. In addition, the following terms are used as defined below:

ADMINISTRATIVE APPEAL: Appeal of a decision made by a County government department where it is alleged by the appellant that there has been an error.

SPECIAL EXCEPTION: Authorization for certain uses of property which are not permitted as a matter of right in a zone; the zoning ordinance enumerates what specific uses may be permitted in particular zones as a special exception and outlines certain standards that must be met in order for that use to be authorized.

VARIANCE: Authorization for the construction or maintenance of a building or structure which is prohibited by the strict application of the requirements of the zoning ordinance reporting area, frontage, setbacks, and in certain circumstances, building height limits. A variance authorizes a change in dimensional requirement and not a change in the use of land.

ZONING ORDINANCE: Montgomery County Code 1986, Chapter 59, Zoning.

III. BACKGROUND

A. Legislative History. In many jurisdictions, the local legislative body has decided that hearing and deliberating upon every application for individual property reclassifications consumes an inordinate amount of their time. Delegating the authority to hear and decide variances and special exceptions to a citizen board or hearing officer appointed by the legislative body, relieves a legislative body from the need to sit through lengthy hearings. Theoretically, this delegation of authority also transfers the decision-making process from a political arena to a quasi-judicial one where decisions can be made based upon technical analysis and planning principles. A final rationale is that because the law outlines the standards and guidelines for granting or denying variances and special exceptions, making these decisions is generally considered more of a regulatory function than a legislative act.

In many localities, the citizen board created by the legislative body to decide selected land use matters has also become a logical place to delegate a different sort of quasi-judicial function, that is, to decide appeals of certain governmental decisions. In what is known as an administrative appeal, a member of the public alleges that a government department has made an administrative error in, for example, issuing (or not issuing) a permit or license. The citizen board provides an administrative remedy where this decision can be appealed and the dispute resolved. Depending upon the jurisdiction, initial decisions made by a citizen board can be appealed either to the legislative body or directly to the courts.

The predecessor of the County's current Board of Appeals (BOA) was the Board of Zoning Appeals created in 1927 by State law, (Chapter 448 of the Laws of Maryland 1927, Regional District Act), with the authority to make decisions on nonconforming uses, variances, and certain administrative appeals. In 1952, four years after the County adopted a Charter and Council/Executive form of government, the Council passed Bill #17

transferring the authority of the Board of Zoning Appeals to a newly created Board of Appeals.¹ The first BOA had three members appointed by the Council for three-year terms; each member received compensation of \$1,500 per year.

In 1953, the County Council passed Zoning Ordinance 2-125, extending the BOA's authority to hear and decide special exception requests, unless otherwise retained by the Council. The text amendment described the procedures for filing, the conditions required prior to granting, and the specific uses to be permitted by special exception.

Since 1953, numerous bills and text amendments affecting the operations of the BOA have been considered by the Council. Some have dealt directly with the composition and quorum requirements of the BOA (i.e., Bill 19-83 increased BOA members' terms from three to four years, Zoning Ordinance 8-9 decreased the number of members needed to constitute a quorum from four to three), and others have addressed specific operating procedures of the BOA (i.e., in 1974, Resolution 7-1901 adopted the Rules of Procedure for the BOA; in 1982, Resolution 9-1783 amended the Rules of Procedure concerning how notice is to be sent in condominiums).

The following series of bills and zoning ordinances followed changes to the Regional District Act that authorized the District Council to designate an administrative officer (1959) and later an administrative agency (1968) to hear and decide special exceptions and/or variances; in either case, the law allowed an applicant to appeal the decision to the BOA:

- In 1961, Zoning Ordinance 4-104 authorized the Director of the Department of Inspections and Licenses (renamed the Department of Environmental Protection (DEP) in 1972) to hear and decide 12 categories of special exceptions, most of which were small scale versions of existing special exceptions under the BOA's jurisdiction;

- In 1975, Bill 42-75 established a separate Office of the Hearing Examiner (Code Chapter 2, Article X). The bill also authorized the BOA, upon approval of three BOA members, to refer cases to the Office of the Hearing Examiner for hearing and recommendation by one of the Council-appointed hearing examiners;

- In 1975, Zoning Ordinance 8-26 transferred three special exceptions under the BOA's jurisdiction to the Hearing Examiner to hear and issue recommendations to the Council for a final decision²; and

¹ Annotated Code of Maryland, Chap. 25A, Express Powers Act for Charter Counties was amended (Chapter 670, Laws of Maryland 1951) authorizing the County to enact laws creating a BOA to hear and decide certain appeals, zoning variances, special exceptions, and/or map amendments.

² The special exceptions are community redevelopment areas, cemeteries, and outdoor theaters.

- In 1982, Zoning Ordinance 9-82 transferred the special exceptions being heard by the Director of DEP to the Hearing Examiner.

Most of the remaining changes to the law that have affected the BOA have been additions or deletions of special exception categories and types of administrative appeals. Appendices A and B document how the BOA's authority has increased from hearing 12 specific administrative appeals and 37 categories of special exceptions in 1953 to 96 special exceptions, 18 specific administrative appeals, plus the broad category of "other appeals" in 1987. During this time period, 13 categories of special exceptions and two specific types of administrative appeals have been deleted.

B. 1972 Study of BOA Rules and Procedures. In addition to the numerous bills and zoning ordinances effecting the BOA, there has been one Council-directed study of BOA operations.

In 1971, the Council appointed a Citizens Advisory Committee with a broad mandate to study the jurisdiction and procedural operations of the BOA. During 1972, the Citizens Advisory Committee presented the Council with two reports. The first report made recommendations for improving the BOA's rules and procedures; and the second made specific recommendations concerning conditions for each use permitted by special exception.

The Citizens Committee concluded that there were "major procedural deficiencies spanning the entire course of proceedings before the BOA." Specifically, the Committee identified what they considered to be inadequate content of applications, notice provisions, hearing and scheduling procedures, content of decisions, appeal procedures, filing fees, and enforcement of special exceptions.

Examples of today's practices that apparently grew out of the Citizens Advisory Committee's recommendations are:

- Requirements for information to be included in petition filings;
- Review of special exception petitions by the Planning Board and Planning Commission staff;
- Notice and posting provisions;
- Written rules of procedure; and
- The County's policy not to issue a building permit until special exception conditions are complied with.

A number of other recommendations made in 1972 have not been implemented. For example:

- Delegating the authority to decide a large number of special exceptions (including child care centers, housing for the elderly, hospitals, drive-in restaurants) to a hearing examiner;
- Increasing the minimum notice period;
- Changing the BOA's meeting day from Thursday because it conflicts with Planning Board meetings;
- Preparing transcripts for every special exception case; and
- Establishing a "Public Zoning Defender".

IV. EVALUATION

This chapter evaluates the laws and rules governing the BOA, staff resources supporting the BOA, routine practices of the BOA, and public perceptions of the BOA. It is organized as follows:

Section A, Overview, outlines the laws and rules of procedure governing the BOA, the appointment and qualification requirements of BOA members, the process surrounding a typical appeal before the BOA, and the BOA's budget.

Section B, Workload and Timely Processing, analyzes changes in the BOA's workload and assesses whether the BOA hears and decides cases in a timely manner; this section includes discussion of the BOA's referral of cases to the Office of Zoning and Administrative Hearings;

Section C, Fulfilling Procedural Requirements, examines the consistency among procedures required by law, the BOA's own Rules of Procedure, and practice;

Section D, Management of BOA Office, discusses whether the BOA office is organized and managed so that staff is able to meet the needs of BOA members and the public, and able to fulfill the internal government responsibilities expected of all County offices;

Section E, Informed Decision-Making, examines whether BOA members, prior to making decisions, receive adequate legal and technical advice;

Section F, Enforcement, discusses whether the BOA's decisions on variances and special exceptions are adequately enforced;

Section G, Record of Appeals, reviews the frequency and outcome of appeals of BOA decisions to the courts; and

Section H, Other Issues, discusses BOA members' compensation and compares the structure of Montgomery County's BOA to similar boards in other Maryland charter counties.

A. Overview

1. County Laws and Rules Governing Operations of the Board of Appeals. The County Code addresses the operations of the BOA in three chapters and one appendix: Chapter 2, Administration, Chapter 2A, Administrative Procedures Act, Chapter 59, Zoning, and Appendix J, Rules of Procedures for the County Board of Appeals.¹ The BOA's authority over variances and special exceptions does not apply to municipal corporations that exercise independent zoning authority: Brookville, Poolsville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove.

¹ Although codified with the title of "Regulations," Appendix J consists of rules of procedure for the BOA adopted by the Council by resolution in 1974; this report will refer to Appendix J as the BOA's Rules of Procedure.

In a number of instances, the laws governing the BOA's operations are duplicative; in others, the laws and Rules of Procedure are not consistent. For example, Chapter 2 and Chapter 59 both outline, in somewhat different terms, the BOA's authority and powers, and Chapter 59 describes the process of filing appeals for variances and special exceptions in two separate articles.

More confusing than addressing the same matter in several places is the fact that the BOA's Rules of Procedure contain a number of procedural requirements that conflict with Chapter 59. According to the County Attorney's office, in cases of conflicting language, provisions in the County Code dominate over provisions in the Rules of Procedure. Specific examples of inconsistencies and the resulting problems are discussed later in this report as part of Section C, Fulfilling Procedural Requirements.

2. Board Members - Appointment and Qualification Requirements

a. Appointment and Financial Disclosure. By law, the BOA consists of five members, who are appointed by the Council for staggered four-year terms.¹ A vacancy that occurs before the end of a term is filled by an appointment for the remainder of the term. As established by Council resolution, BOA members currently receive \$9,811 per year, and the Chair receives \$11,649.

The Council's recruitment and appointment process for the BOA is similar to that for most other Council-appointed boards and commissions. Approximately three months before a BOA member's term expires, the vacancy is advertised, and interested applicants are instructed to send a letter and resume to the Council. BOA applicants, similar to applicants for other compensated boards, are also required to submit a sworn confidential financial disclosure statement. To conform with the disclosure requirements for BOA members contained in the BOA's Code of Ethics (Code Section 2-109), that go beyond those generally outlined in the County's ethics law (Code Chapter 19A) the Council's legal staff has designed an addendum to the standard financial disclosure form that must be filled out by BOA applicants.²

At the close of the application time period, Councilmembers and the County Executive receive copies of the letters and resumes of applicants. Applicants who are selected for interviewing by at least two Councilmembers and/or the County Executive are scheduled for interviews with the Council.

After the interviews, the Council's legal staff reviews the financial disclosure statements for those applicants interviewed and brings any possible conflicts to the attention of Councilmembers. The appointment of the BOA member is then set on a Council agenda; in public session, the Council nominates and votes to appoint a new BOA member.

¹ The language in Code Section 2-113 is awkward in that it states that the Council shall appoint the BOA Chair, and also states that the BOA's Rules of Procedure may include procedures for selecting the BOA Chair.

² The addendum requires BOA applicants to disclose whether they, or a close business or professional associate, act as broker, agent, attorney, representative, or employee of any person in his business dealings with the County, M-NCPPC, WSSC, or the BOA.

Within three weeks from the date of appointment, the law (Code Section 2-108) requires the Council "to make a public disclosure of the financial disclosure statement of the BOA appointee". In practice, Council staff has interpreted this to mean that the financial disclosure statement is sent to the Office of the Ethics Commission as the place required by law to maintain financial disclosure statements, including those for compensated members of boards, committees, and commissions. However, because of an inconsistency between Code Chapters 2 and 19A, sending the BOA members' financial disclosure statements to the Ethics Commission has not resulted in public disclosure of the statements. Because BOA members are not specifically referenced in Chapter 19A, BOA members are treated by the Ethics Commission like any other compensated board member, which means that their financial disclosure statements are currently maintained as confidential.

b. Qualifications of BOA Members. Outside of the conflict of interest restrictions, the only legally required qualifications of BOA members are that they be County residents and not more than three can be from the same political party (Code Section 2-110).

A 1985 survey of big city zoning boards of appeals conducted by the American Planning Association (APA) revealed that, although many cities have conflict of interest restrictions, only six out of 23 cities surveyed had qualification requirements for BOA members. Where qualifications are stated, they require that members be selected from certain professions such as planning, law, civil engineering, and building construction. One exception is New York City, however, where serving on the Zoning Board of Appeals is a full-time job, and members must have a minimum of ten years experience as an architect, engineer, or urban planner.

Although most cities have few legal qualification requirements, the APA survey indicated that Montgomery County is similar to most other jurisdictions that apply unwritten qualifications, i.e., appointees must be active in community affairs, well-educated, considered capable of making informed, impartial, and judicious decisions.

When asked whether additional qualifications for BOA members should be established by County law, the great majority of citizens interviewed did not favor legally imposing specific education, background, or skills requirements. Many expressed the feeling that criteria could become too restrictive, and that the appointment of high quality people is something appropriately delegated to elected Councilmembers. Several interviewees did, however, advocate establishing legal qualification requirements, as a way to avoid BOA appointments being perceived as purely "political". One individual commented that appointees, "should not be educated at the expense of the public."

Almost everyone interviewed supported the basic concept of appointing lay BOA members, who as a group represent a cross-section of the citizenry. A majority felt that some familiarity with the land use process is desirable, and many mentioned that, while being an attorney should not be a criteria for appointment, it is essential to have at least one lawyer on the BOA at all times. Others felt that there should always be an architect or engineer with the capability of reading and comprehending building plans. Another suggestion was that BOA members should represent different geographic regions of the County.

When asked what qualities make for a "good BOA member," the attributes most frequently mentioned by those interviewed were:

- Excellent writing skills;
- Open-minded;
- Logical thinker;
- Ability to pay attention to detail;
- Attentive;
- Knowledge of County;
- Lots of common sense;
- Ability not to be unduly influenced by citizen pressure;
- Judicial temperament, and
- Careful and deliberate.

3. The BOA Process. The evaluation of specific aspects of the BOA operations only makes sense if the reader understands the basic process surrounding the bulk of the BOA's work, that is, hearing and making decisions on variances, special exceptions, and administrative appeals. The steps for a typical BOA case are as follows:

a. Filing an Appeal. Forms for filing a petition for special exception, a variance appeal, or administrative appeal are available in the BOA office located in the Stella B. Warner Council Office Building in Rockville. Applicants must complete the forms, compile all required supplemental data,¹ and submit four copies of the completed application to the BOA office, along with the appropriate filing fee and sign deposit (for variances and special exceptions only).

b. Hearing Date and Sign. Once a completed application is accepted by the BOA staff, the case is assigned a number and a hearing date. Special exception and variance applicants receive a sign to post on the property. The sign informs the public that a request for variance or special exception has been filed, and provides the BOA's office phone number to call for additional information.

c. Distribution of Appeal Files. The BOA staff distributes the four copies of a petition for special exception or variance appeal as follows: one to the Montgomery County Planning Commission's Development Review Division; one to DEP's Construction Code Enforcement Division; one is maintained as the official BOA file, and the final copy becomes the "read" file to be available for citizens to review upon request. Distribution of administrative appeal files varies depending upon the nature of each individual case.

¹ Code Section 59-A-4.2 specifies what information must accompany petitions for special exceptions and variances; Code Section 59-A-4.3 authorizes the BOA to develop forms outlining what data must accompany administrative appeals.

d. Public Notice. The BOA staff is required to send out notices of a special exception or variance request within seven days after the filing date. According to Chapter 59, the following individuals, groups, and agencies are entitled to notice: the owners of the property, all adjoining and confronting property owners, the local citizens association(s), any municipality or special taxing district, the Department of Environmental Protection, the Washington Suburban Sanitary Commission, the State Highway Administration, and the Board of Education. At its discretion, the BOA can also send notice to other government agencies and interested parties. Public notice of administrative appeals must follow the procedures outlined in Chapter 59 and the Administrative Procedures Act (Code Chapter 2A).

e. Review by Planning Board and Planning Commission Staff. All variance and special exception requests are reviewed by the Director of the Planning Commission's Development Review Division. A technical staff report is provided for special exceptions and selected variances. Most special exceptions are also reviewed by the Planning Board, who submits a separate written recommendation to the BOA. The law requires input from the Planning Board and Commission staff to be received by the BOA five days before the public hearing.

f. Public Hearing. The BOA generally schedules public hearings for every Thursday throughout the year, except for a two or three vacation during the summer.

- Variances and Special Exceptions. A public hearing can take place no sooner than 30 days after filing for a variance and 60 days after filing for a special exception. Public hearings on variances and special exceptions are conducted according to the BOA's Rules of Procedure. In general, the format of the hearings is flexible and the BOA is not bound by the strict rules of evidence. BOA members may question witnesses at any time during the proceedings. Opposing parties are permitted to cross-examine each witness at the conclusion of the testimony. After the presentation of all evidence and testimony, the BOA may close the record or choose to keep it open for an unspecified amount of time if additional evidence is forthcoming.

- Administrative Appeals. Public hearings on administrative appeals are required to be held in accordance with the Administrative Procedures Act (Code Chapter 2A), and are, in general, more formal than hearings on variances and special appeals. There is a 30-day minimum time period required between the time of filing and the date of public hearing.

g. Decision. The BOA members meet in closed executive session to discuss and vote on cases. Generally, the BOA meets in executive session on Thursdays during the hours they are not in public hearings. Once the record is closed, the BOA has 30 days to render a decision and issue a written opinion. If additional time is needed, the BOA must pass a resolution to extend the time.

h. Opinion Writing. The BOA Chair assigns individual BOA members with the responsibility for writing specific opinions. Most variance opinions are drafted by filling in a form with the necessary information. Special exception and administrative appeal opinions are generally either dictated or written out in manuscript style, and typed up for final BOA approval by the BOA staff.

i. Notice of Decision. After a written decision is officially approved (four votes are needed to approve a special exception, a simple majority for all other decisions), the BOA staff is required to send the decision to the petitioner with copies to the Planning Commission, the Department of Environmental Protection (DEP), the Department of Finance, all the parties entitled to original notice and any additional parties of record. Each party is informed of their right to appeal the BOA's decision to the Circuit Court within 30 days.

j. Additional Petitioner Requests or BOA Action. A petitioner can request, in writing, that the BOA reopen a case for the purpose of reconsideration, modification, or rehearing. In order for the BOA to reopen a case, the BOA members must pass a written resolution.

If the BOA receives complaints or official notice from DEP that conditions of a special exception have been violated, the BOA may vote to hold a show-cause hearing. The purpose of a show-cause hearing is to determine whether the BOA should revoke the special exception.

k. Roles of Other Agencies/Offices. In addition to requiring technical assistance and a recommendation from the Planning Board and its staff, the County Code designates the County Attorney as the legal advisor to the BOA, and specifies that the BOA may request information or assistance from other agencies in the County government and other local, State and Federal agencies. The Code also authorizes the BOA, upon three votes of its members, to delegate the hearing of cases to the hearing examiner appointed in Chapter 2, Article X, Office of Zoning and Administrative Hearings; the hearing examiner then provides a report and written recommendation back to the BOA for final decision. Finally, the law designates DEP as the department responsible for enforcing the BOA's decisions on variances and special exceptions.

4. BOA's Budget

a. Summary of BOA's Office Budget FY 82 - 87. The budget for the BOA's office is handled like other legislative branch budgets. Every year, the BOA staff submits a budget request to the Office of Management and Budget, the County Executive recommends a proposed funding level for the BOA, and the County Council makes the final appropriation decision.

As Table 1 shows, from FY 82 to FY 87, total program costs for the BOA office increased 47 percent from \$119,000 to \$175,000. Since FY 85, actual expenditures of the BOA office have exceeded annual budget levels. A review of budget documents indicates that BOA office increases have been primarily due to expected annual increases in salaries and compensation, plus significant increases in overtime expenditures, and increases in fees for court reporters and transcripts.

During this same time period, filing fee revenues more than doubled from \$104,000 in FY 82 to \$224,000 in FY 87. Filing fee revenue has steadily increased so that general revenue support for the BOA which was \$15,400 (13% of total) in FY 82 has been zero for the past four years. In fact, the BOA generated revenue of \$53,000 over total program costs in FY 86, and \$49,000 in FY 87.

Table 1

BOA Office Program Costs and Filing Fee Revenues

FY 82 - FY 87

(in 000's)

	<u>FY82</u>	<u>FY83</u>	<u>FY84</u>	<u>FY85</u>	<u>FY86</u>	<u>FY87</u>
Total Program Costs:	\$119	\$133	\$135	\$148	\$160	\$175
Filing Fee Revenue:	\$104	\$123	\$145	\$140	\$213	\$225

Source: FY 82 - FY 87 operating budgets.

b. Costs of Supporting BOA Go Beyond BOA Office. As a County government function, the BOA costs a great deal more than the personnel and operating expenses reflected in the annual operating budget for the BOA office.

Without pricing out the exact costs of staff effort that supports the processing of variances, special exceptions, and administrative appeals decided by the BOA, a conservative estimate would be at least \$80,000-\$100,000 beyond the BOA office itself. This is based upon an estimate of:

- County Attorney time spent advising the BOA and defending BOA decisions appealed to Circuit Court;
- Planning Commission staff time spent preparing technical staff reports and Planning Board time spent preparing recommendations to the BOA;
- DEP staff time spent conducting inspections of special exceptions and variances for compliance with BOA-imposed conditions, conducting investigations on complaints alleging violation of BOA-imposed conditions, and conducting routine inspections;
- DHCD staff time spent inspecting accessory apartments and staff time providing technical advice to potential accessory apartment petitioners; and
- Hearing Examiner time spent on cases referred for written report and recommendation.

The roles of each of these other departments, as they relate to the BOA, are discussed in more depth throughout this evaluation.

B. Workload and Timely Processing

1. General. One criterion for evaluating the efficiency of operations is timeliness. For the BOA, timely processing means meeting legally mandated time requirements for notice, public hearing, and decision-making.

This section first reviews data since 1979 on BOA processing time, specifically measured as the lengths of time between filing an application, public hearing, and final BOA action. This is followed by an analysis of workload trends that affect the timeliness of BOA decision-making. The section ends with a review of the BOA's use of the Office of Zoning and Administrative Hearings (OZAH) as a workload alleviator.

2. Length of Processing Time. Many of those interviewed about the performance of the BOA commented critically upon the length of time it takes to receive a BOA decision. Almost everyone interviewed, who felt knowledgeable enough to offer a comparative perspective, maintained that the BOA today takes longer than it did ten years ago. The common perception is that the time interval between submitting an application and the public hearing has grown longer, as well as, the time interval between the public hearing and receipt of a final decision.

Data on BOA processing time obtained through a manual review of BOA card files since 1979 indicate that:

- The BOA's average (mean) processing time has, since 1979, often exceeded time intervals established by law. Specifically, average time periods between filing and public hearing have, more often than not, exceeded the minimum 30-day requirement for variances and administrative appeals, and the minimum 60-day requirement for special exceptions. Although the BOA has consistently rendered decisions on variances within the required 30 days after the close of the record, the BOA has, on average, taken longer than the 30-day limit to render decisions on special exceptions and administrative appeals.

- The percentage of special exception and administrative appeals with very lengthy processing times was significantly higher in 1986 compared to 1979. Specifically, 44 percent of the BOA's cases took longer than five months from filing to BOA decision in 1986 compared to only nine percent in 1979. The percentage of special exceptions and administrative appeals with processing time equal to or greater than six months was 22 percent in 1986 compared to only seven percent in 1979.

- The length of average processing times has also increased. The average processing time for administrative appeals was approximately one month longer in 1986 than it was in 1979. Average processing time for variances was 53 days in 1979 and 63 days in 1986. The median processing time for special exceptions and administrative appeals was 110 days in 1979 and 127 days in 1986.

In addition to lengthier processing time, the data show an increase in the number of public hearing continuances. It is standard practice for the BOA to continue a case to another hearing day if the time allotted for the case on the BOA's agenda is not sufficient. In 1979, there were eight cases requiring a hearing continuance; there were 14 such cases in 1982 and 24 in 1986. During the first six months of 1987, there were already 15 public hearing continuances.

Processing times for BOA cases would undoubtedly have grown even longer if the number of hours BOA members spend hearing cases every week had not also increased. A review of BOA minutes shows that while the total number of BOA public hearings days each year has remained relatively constant, the typical BOA hearing day has grown appreciably longer over the past eight years. During 1979, the BOA heard from 1-12 cases during one hearing day, with the average being four cases. During 1986, however, the BOA heard from 1-20 cases in one hearing day, with an average of eight.

In sum, the data indicate that the BOA is not consistently meeting legally mandated time requirements, and at least for a significant portion of the BOA's cases, processing time is longer today than it was in 1979. The following sections analyze changes in the BOA's caseload that have had an impact on the timeliness of BOA decisions: the volume of cases, the types of cases, the complexity of cases, and the referral of cases to the Office of Zoning and Administrative Hearings.

3. Volume of Cases Filed and Miscellaneous Hearings Since 1979.

Table 2 shows the total numbers of special exceptions, variances and administrative appeals filed with the BOA from 1979 through the first six months of 1987. The data indicate a significant increase in the BOA's caseload; specifically:

- The total number of variances, special exceptions, and administrative appeals filed with the BOA on an annual basis has more than doubled in the past eight years, from 167 cases in 1979 to 348 cases in 1986; the total number of cases filed with the BOA is projected to top 400 in 1987.
- In terms of volume, variance requests have continued to outweigh any other type of appeal filed with the BOA constituting over half of the BOA's caseload. Since 1979, the number of variances filed each year has steadily increased from 91 in 1979 to 213 in 1986.
- Special exception petitions, which explain approximately 35 percent of the BOA's caseload since 1979, have also increased, but at an erratic rate. The tremendous increase in special exception filings from 1984-1986 was due to the number of petitions for accessory apartments being submitted according to statutory deadlines. However, even if all of the accessory apartment cases are subtracted out, the number of special exception petitions filed in one year increased significantly from 49 in 1979 to 83 in 1986.
- Administrative appeals remain the smallest category of appeals filed with the BOA, constituting approximately 11 percent of the BOA's caseload since 1979. Administrative appeal filings have also increased, but less dramatically than variances or special exceptions. In 1979, there were 27 administrative appeals filed and in 1986 there were 34 appeals filed. The surge up to 44 administrative appeals cases in 1985 was due to 27 taxicab license appeals filed in that year.

Table 3 reports the additional workload of miscellaneous hearings held by the BOA since 1979. Modification hearings are when the BOA hears and decides on a petitioner's request for a major modification to a special exception, (minor modifications are granted or denied by BOA resolution). Show cause hearings, are when the BOA determines if a special

Table 2
Board of Appeals - Cases Filed
Special Exceptions, Variances, and Administrative Appeals
1979 - 1987

<u>Type of Case Filed:</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987*</u>	<u>Total</u>
Special Exception	49	44	42	47	32	193 ^a	144 ^b	101 ^c	59	711 (34%)
Variance	91	93	90	107	115	134	165	213	125	1,133 (55%)
<u>Administrative Appeal</u>	<u>27</u>	<u>27</u>	<u>10</u>	<u>13</u>	<u>24</u>	<u>27^d</u>	<u>44^e</u>	<u>34</u>	<u>22</u>	<u>228 (11%)</u>
Total	167	164	142	167	171	354	353	348	206	2,072 (100%)

^a Includes 137 accessory apartment cases.

^b Includes 101 accessory apartment cases.

^c Includes 18 accessory apartment cases.

^d Includes 15 rent supplement appeals.

^e Includes 27 taxicab license appeals.

* Includes data only from January 1 - June 30, 1987.

Source: Board of Appeals card files.

Table 3

Number of Miscellaneous Board of Appeals Hearings
1979 - 1987

<u>Type of Hearing:</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987*</u>	<u>Total</u>	
Show Cause	28	44	27	38	12	7	33	20	22	231	(66%)
Modification to a Special Exception	4	10	2	8	9	8	10	7	5	63	(18%)
Review	9	11	0	5	6	2	6	5	1	45	(13%)
Remand	3	0	0	2	3	0	0	5	0	13	(3%)
<u>Total</u>	<u>44</u>	<u>65</u>	<u>29</u>	<u>53</u>	<u>30</u>	<u>17</u>	<u>49</u>	<u>37</u>	<u>28</u>	<u>352</u>	<u>(100%)</u>

* Includes data only from January 1 - June 30, 1987

Source: BOA monthly agendas, quarterly reports, and minutes.

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exception should be revoked. Review hearings are a result of a complaint made to the BOA or another agency about a previously granted special exception, or because the BOA stipulates in the conditions for granting a petition that a regular review is necessary. Remand hearings are for cases sent back to the BOA from the Circuit Court or the Court of Appeals. Overall, the data show that miscellaneous hearings have remained a steady, but relatively small portion of the BOA's workload.

4. Type and Complexity of Appeals Filed with BOA. In addition to the volume of cases, processing time is also influenced by the type of variances, special exceptions and administrative appeals filed with the BOA. When asked about changes to the BOA's workload, one common observation voiced by those interviewed was that cases before the BOA are "more complex" today than they used to be. When asked to define "more complex", those interviewed explained they meant BOA cases are more controversial, involve more complicated planning and land use issues, and more frequently involve lawyers and expert witnesses.

Data on the types of appeals filed with the BOA since 1979 were gathered by manually reviewing the BOA's card files. In an effort to determine changes in "complexity", a 10 percent random sample of special exceptions, and variances, and a 20 percent random sample of administrative appeals heard by the BOA between 1979-1986 was selected. The files for these 235 cases were reviewed for changes over time in the following factors as plausible indicators of complexity: presence of an attorney, amount and type of opposition, participation of expert witnesses in the public hearing, inclusion of professionally prepared studies in the record, and number of exhibits in the case file.

Analysis of the data shows that some cases before the BOA today are very similar to those heard eight years ago. However, a portion of the BOA's workload is constantly changing in response to changes in the zoning ordinance (i.e. addition or deletion of special exception categories), the laws and practices of County government (i.e., issuing new taxicab licenses, assessment of building permit fees), and the needs of the community (i.e., housing for the elderly, day care centers). The data also show that while the factors of complexity reviewed remained relatively constant for variances, there were some measurable changes in special exceptions. The data also show that administrative appeals differ both substantively and procedurally from variance and special exceptions, and cannot be characterized by the same measures of complexity.

a. Variances. There does not appear to be any significant difference between the typical variance appeal filed today and the variance filed eight years ago. The large majority of variances continue to be straightforward and routine. Although variances constitute over half of the BOA's caseload, they consume only approximately 25 percent of the BOA's time.

The 10 percent random sample of variances filed between 1979-1986 showed that 87 percent were uncontested and 89 percent were approved (see Table 4). With a handful of exceptions, almost all variance applicants continue to be homeowners, and the typical variance petition still involves a request for a yard setback for some form of home improvement i.e., an addition to the house, a garage, a deck, a swimming pool. The percentage of variances filed with the assistance of an attorney has remained around 10 percent. None of the factors of complexity studied showed any significant change during the past eight years.

Table 4

Board of Appeals Decisions on Special Exceptions,
Variances, and Administrative Appeals
1979 - 1987

<u>Special Exceptions</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987*</u>	<u>Total</u>
Number Filed	49	44	42	47	32	193	144	101	59	711 (100%)
Decision:										
Granted	41	38	37	39	28	157	124	77	30	571 (81%)
Denied	7	4	4	3	4	23	7	13	7	72 (10%)
Dismissed	1	2	1	5	0	13	12	8	3	45 (6%)
Pending	0	0	0	0	0	0	1	3	19	23 (3%)
<u>Variances</u>										
Number Filed	91	93	90	107	115	134	165	213	125	1,133 (100%)
Sample Size ¹	9	9	9	11	12	13	17	21	13	114 (10%)
Decision										
Granted	9	8	8	10	12	12	13	18	11	101 (89%)
Denied	0	1	0	0	0	1	3	3	1	9 (8%)
Dismissed	0	0	1	1	0	0	1	0	0	3 (2%)
Pending	0	0	0	0	0	0	0	0	1	1 (1%)
<u>Administrative Appeals</u>										
Number Filed	27	27	10	13	24	27	44	34	22	228 (100%)
Decision										
Granted	3	4	2	3	4	0	19	6	2	43 (19%)
Denied	14	6	5	2	10	5	19	7	1	69 (30%)
Dismissed	10	17	3	8	10	22	6	16	2	94 (41%)
Pending	0	0	0	0	0	0	0	5	17	22 (10%)

¹ All the data for variances is based on a ten percent random sample of the total number of variances filed each year from January 1 - June 30, 1987.

* Includes data only from January 1 - June 30, 1987.

b. Special Exceptions. Today, there are a total of 96 special exception categories for which one can file a petition before the BOA. (Appendix B traces the addition and deletion of special exception categories since 1953.) The types of special exception petitions actually filed have varied over time, with certain categories filed more often than others in certain years and other categories rarely filed at all. Since 1979, although special exceptions have constituted approximately 35 percent of the BOA's caseload, they probably consume close to half of the BOA's time.

The majority of special exception applicants continue to be corporations and businesses. Of the special exception petitions filed between January 1, 1979 and June 30, 1987, the BOA has granted 571 (81%) special exceptions, denied 72 (10%), and dismissed 45 (6%); 23 (3%) of these cases are still pending a BOA decision (see Table 4).

Appendix C lists all the special exceptions filed by category from January 1, 1979 - June 30, 1987. The bulk of special exceptions filed during this time period fall into eight categories; twenty-eight (35%) of the categories average between one to three filings per year, and 57 (59%) of the special exception categories have not been filed at all during the last eight years. The data indicate:

- Since 1979, the largest number of petitions in any single category has been for accessory apartments. This large number of filings is mainly due to the passage of Zoning Ordinance 10-13 which required all existing accessory apartments to file for a special exception by February 1, 1985. The number of these petitions has declined since 1985 and the large volume of accessory apartment applications is thought to be a one-time occurrence.

- The second largest number of filings since 1979 has been for home occupations, which have steadily increased from five petitions in 1985 to 17 in 1986, with 12 already filed during the first half of 1987. Many attribute the increase in home occupation filings to the growing pressure in certain communities for home businesses to comply with the zoning ordinance.

- Child day care centers is the third most frequently filed special exception category since 1979. According to the number of filings in recent years - five in 1985, 13 in 1986, and nine in the first half of 1987 - child day care appears to be one of the fastest growing categories.

- The fourth largest number of special exception filings has been in the category of auto filling stations with 30 petitions filed since 1979. Auto filling stations, however, do not appear to be a growing category; remaining relatively constant during the past eight years.

- Three other special exception categories filed less frequently with the BOA, but often enough to represent a significant number, and noticeably on the rise are those for private educational institutions, horticultural nurseries and commercial greenhouses, drive-in restaurants, and housing for the elderly and handicapped.

The ten percent random sample of special exceptions filed between 1979-1986 revealed significant changes in several factors of complexity. Specifically, the data show that opposition to special exception petitions has increased in terms of the percentage of cases opposed at all and a greater

level of participation from organized citizen's groups. From 1979 through 1982, 30 percent of the special exception cases heard by the BOA were opposed, with 16 percent of the opposition coming from organized citizens' groups. In contrast, from 1983 to 1986, 55 percent of special exception cases were opposed, with 32 percent of the opposition coming from organized citizens' groups.

There has also been a decided increase in the number of expert witnesses testifying on behalf of applicants during public hearings, and the number of professionally prepared studies presented to the BOA. A comparison of cases before the BOA during 1979 - 1982 to cases before the BOA during 1983 - 1986 shows a 62.5 percent increase in the number of expert witnesses and a 182 percent increase in the number of professionally prepared studies submitted to the BOA. In general, these elements add to the length of the hearing and often increase the amount of information and additional issues that BOA members must consider in reaching their decision.

c. Administrative Appeals. As listed in Appendix A, the County Code specifies various administrative decisions that can be appealed to the BOA. The law also includes a general provision for the BOA to hear and decide "other appeals".

A total of 228 administrative appeals were filed with the BOA between January 1, 1979 and June 30, 1987. Of these, the BOA has granted 43 (19%) and denied 69 (30%); 94 (41%) appeals were dismissed and 22 (10%) are still pending (see Table 4). The large number of dismissals is due to parties reaching a resolution on the dispute between the time an appeal is filed and the time of the public hearing. While constituting 15 percent of the BOA's caseload, administrative appeals consume approximately one-fourth of the BOA's time.

As reported on Table 5, the Department of Environmental Protection (DEP) has been a party in almost 60 percent of the administrative appeal cases filed each year with the BOA since 1979. Outside of DEP, decisions of other departments have been appealed to the BOA on an inconsistent and infrequent basis.

The 20 percent random sample of administrative appeals filed between 1979-1986 indicates that administrative appeals differ both substantively and procedurally from special exceptions and variances. Specifically:

- Although many administrative appeals involve zoning and land use issues, the BOA has authority to hear and decide administrative appeals that involve a broad range of procedural and programmatic issues;

- In hearing administrative appeals, the BOA is required to follow a more formal set of procedures as outlined in the County's Administrative Procedures Act (Code Chapter 2A);

- In contrast to special exceptions and variances where the Planning Commission staff is required to provide a technical staff report to the BOA, the law does not designate a source of technical staff assistance for the BOA in administrative appeals cases;

Table 5

Types of Administrative Appeals Filed with the Board of Appeals
1979 - 1987

<u>Petition Filed to</u> <u>Appeal a Decision</u> <u>by:</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987*</u>	<u>TOTAL</u>
DEP	19	19	7	10	18	8	11	26	16	134 (59%)
DOT	3	0	0	0	0	0	27 ^b	0	0	30 (13%)
DHCD	0	0	0	0	0	17 ^a	6	1	4	28 (12%)
DFRS	3	6	3	3	2	2	0	4	2	25 (11%)
Health	0	0	0	0	3	0	0	2	0	5 (2%)
Planning Board ^c	2	2	0	0	0	0	0	0	0	4 (2%)
Hearing Examiner ^d	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>2 (1%)</u>
Total	27	27	10	13	24	27	44	34	22	228 (100%)

^a These included 15 rent supplement appeals.

^b These were 27 taxicab license appeals.

^c Planning Board decisions are directly appealable to the Circuit Court, not the Board of Appeals. There were four cases in which the petitioners sought to interpret the law so that Planning Board decisions could be appealed to the BOA, but the cases were dismissed by the BOA for "lack of jurisdiction".

^d This represents appeals of Hearing Examiner decisions on special exceptions as outlined in 59-G-1.12.

* Includes data only from January 1 - June 30, 1987.

Source: Board of Appeals card files.

- Because, by definition, an administrative appeal is an adversarial proceeding involving at least two parties (the petitioner vs. the government department), administrative appeals tend to be more litigious than the average special exception or variance. Over the past eight years, 56 percent of the petitioners in an administrative appeal have retained an attorney to represent them before the BOA compared to 49 percent of special exceptions and 11 percent of variances; and

- A higher percentage of the BOA's administrative appeal decisions are appealed to Circuit Court; from January 1, 1979 - June 30, 1987, only 14 percent of special exception decisions and one percent of variance decisions were appealed to Circuit Court, compared to 38 percent of administrative appeal decisions.

5. BOA's Relationship to the Office of Zoning and Administrative Hearings (OZAH)

a. Statutory Relationship. A review of legislative files reveals that amending the law in 1975 to authorize the BOA to refer any matter before the BOA to a Council-appointed hearing examiner in the Office of the Hearing Examiner (the office title was changed to the Office of Zoning and Administrative Hearings in 1985) was enacted as one way to alleviate the BOA's workload. The procedure for referring cases to OZAH is described both in Code Chapter 2 (Section 2-112(b), 2-113A) and Chapter 59 (Section 59-A-4.125):

- Three votes on the BOA are required to refer any matter before the BOA to OZAH;

- OZAH then holds a public hearing on the case and, a written report and recommendation from OZAH is due back to the BOA within 30 days after the public hearing record closes;

- Within ten days after OZAH's report is transmitted to the BOA, any person or association which appeared and testified at OZAH's hearing may request, in writing, an opportunity to present oral argument before the BOA;

- The BOA has the discretion to grant or deny the request for oral argument; and

- Unless extended by the BOA, the BOA must make its decision (to approve, deny, or remand to OZAH) on the case within 30 days after OZAH's report is transmitted to the BOA.

In addition to holding hearings and making recommendations to the BOA, OZAH has statutory authority to hear and decide petitions for special exceptions for a limited number of uses outlined in Section 59-G-1.12.¹ Any

¹ The Hearing Examiner is authorized to hear and decide special exceptions for a boarding house for three guests or fewer; a private educational institution for five or fewer students; a home occupation in the R-30, R-20, or R-10 zone; a noncommercial riding stable for not more than two horses; a temporary structure; a renewal of a temporary special exception for a boarding house, home occupation, or a riding stable; and, a farm tenant mobile home for not more than one but less than four occupants.

person aggrieved by OZAH's decision on one of these special exceptions, may, within ten days after the decision is rendered, appeal OZAH's decision to the BOA. The BOA hears such cases de novo.

OZAH's primary function, which does not involve the BOA, is to hold hearings and makes recommendations to the District Council on local map amendments (Code Section 59-H-5.3). OZAH is also authorized to hear and make recommendations on three special exception categories, for which the District Council has retained decision authority: community redevelopment areas, cemeteries, and outdoor theatres (Code Section 59-G-1.13). A recent Charter amendment authorizes the Hearing Examiner to also preside over matters referred at the request of executive branch agencies.

b. In Practice. A review of BOA and OZAH records indicates that from January 1, 1979 - June 30, 1987, the BOA referred 53 special exceptions, 14 administrative appeals, and 18 variances to OZAH for hearing, report, and recommendation. These 85 cases represent only four percent of the total number of variances, special exceptions, and administrative appeals filed with the BOA during this time.

As Table 6 shows, the BOA has recently increased the number of cases referred to OZAH. Sixty-nine or 81 percent of the cases ever referred to OZAH have been sent since January 1986. The number of cases referred to OZAH within the first six months of 1987 (45) was greater than the total number referred during the previous seven years.

Out of the 85 cases referred to OZAH for hearing and recommendation, there have been six (7%) requests for oral argument before the BOA, of which the BOA has granted five. In only two cases, the BOA's decision has not been consistent with OZAH's recommendation. A review of BOA files indicates that, in most cases, the BOA has adopted OZAH's report and recommendations as the BOA's decision.

Interviews with BOA staff and the BOA Chair indicate that there is no written policy for deciding how many and which cases to refer to OZAH. During the past six months, the BOA has, on several occasions, referred an entire afternoon of already scheduled public hearings to OZAH when a hearing scheduled for the morning takes longer than expected, and the BOA finds itself unable to complete its entire agenda. In a separate agreement made between the BOA and the Director of OZAH in the Spring of 1987, the BOA has been referring all accessory apartment special exceptions to OZAH. More recently, the BOA has referred many of the administrative appeals involving impact fees to OZAH for report and recommendation.

A review of files indicates that, so far, even with the increased number of cases referred this year, OZAH has been able to accommodate the BOA's referrals. Although there has been one instance when OZAH's report was not transmitted to the BOA within the required 30 days after the hearing record closed, data show that in all other cases referred to OZAH, the report has arrived within the statutory requirement.¹

¹ The law requires OZAH's report to be submitted to the BOA within 30 days after the close of the record; it was beyond the scope of this report to determine whether the record itself has ever been held open an inordinate period of time.

Table 6

Board of Appeals Cases Referred to the Hearing Examiner
1979 - 1987

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987*</u>	<u>Total</u>
Special Exception	0	0	1	0	0	3	3	14	32	53 (62%)
Variance	0	0	0	0	0	0	0	7	11	18 (21%)
Administrative Appeal	2	5	0	0	1	0	1	3	2	14 (17%)
<hr/> Total	<hr/> 2	<hr/> 5	<hr/> 1	<hr/> 0	<hr/> 1	<hr/> 3	<hr/> 4	<hr/> 24	<hr/> 45	<hr/> 85 (100%)

* Includes data only from January 1 - June 30, 1987.

Source: Office of Zoning and Administrative Hearings

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c. Public Perceptions. As reviewed above, experience to date supports the idea that referring cases to OZAH saves BOA member time. However, interviews with members of the public familiar with both the BOA and OZAH indicated diverse opinions about referring BOA cases to OZAH for hearing and recommendation.

Approximately half of those interviewed supported referring more BOA cases to OZAH for hearing and recommendation. Although a number of interviewees further suggested rewriting the law to transfer the authority to hear and decide whole categories of special exceptions and/or administrative appeals from the BOA to OZAH, the predominant view expressed was to allow the BOA to retain ultimate authority over which cases get referred to OZAH. The reasons stated for referring more cases to OZAH included:

- OZAH is already designated in the law as a resource available to alleviate the BOA's increasing workload;
- Because the Hearing Examiner is an attorney familiar with County law and procedures, OZAH is well equipped to handle lengthy, complex cases that involve technical legal issues;
- OZAH's hearings are better organized and more "fair" than BOA hearings (specifically, the Hearing Examiner explains procedures better, consistently allows appropriate parties to speak, and is more "professional"); and
- OZAH's staff is more professional and accommodating than the BOA's staff.

The other half of people interviewed did not feel that referring more cases to OZAH was a preferred solution for reducing the BOA's workload. The major reasons stated included:

- Sending cases to OZAH doesn't save BOA time if an applicant requests (and the BOA grants) oral argument before the BOA;
- Sending cases to OZAH separates the decision-makers (the BOA) from the applicants and other citizens; and a transcript can never recapture the feelings expressed during a public hearing;
- OZAH hearings are lengthier and more formal than BOA hearings; and
- Because the Hearing Examiner is a non-merit employee whose primary job is to hear and make recommendations to the Council on local map amendments, sending BOA cases to OZAH violates the legislative intent of having appeals heard and decided by a citizen board in an independent environment.

C. Fulfilling Procedural Requirements

1. Procedural Requirements are Internally Inconsistent. As outlined earlier, legal requirements concerning the conduct of BOA business are found within three chapters of the County Code (Chapter 2, Chapter 2A, Chapter 59) and the BOA's Rules of Procedure (codified as Appendix J of the County Code). One problem for members of the public is the inconvenience and confusion that results from requirements for basic procedures such as filing, notice, public hearing, voting, and decision-making not physically being located in a single place in the County Code. An additional problem is that, because the BOA's Rules of Procedure have not been amended to reflect changes in County law, the Rules of Procedure currently being distributed to the public contain certain procedural requirements that conflict with Chapter 59.

The BOA's Rules of Procedure were initially adopted in the mid-1970's in response to a recommendation for written procedures made in 1972 by a citizens advisory group studying the BOA. While the Rules of Procedures are described as "supplemental" to any provisions in the County Code, a good portion of them repeats what is already contained in law. The Rules of Procedure consist of 14 sections, each of which addresses a separate operating procedure: filing, record keeping, notices, meetings, hearings, reconsiderations, complaints and revocations, etc.

Over the years, while sections of the zoning ordinance (County Code Chapter 59) that outline procedures for the BOA have been amended, the Rules of Procedure have not been consistently amended to reflect these changes. (The four minor amendments made to the Rules of Procedure since 1974 did not relate to statutory changes made in Code Chapter 59.) As a result, while many of the Rules still describe current practice, enough of them are out-of-date that a citizen relying upon the existing version of the Rules of Procedure to understand the BOA is certainly at a disadvantage, and could easily become frustrated upon learning that a written document, currently being distributed by the BOA office, is not accurate.

Table 7 offers examples of inconsistencies between the zoning ordinance and the BOA Rules of Procedure. In addition, because Chapter 59 has been amended and renumbered since 1974, the numerous cross-references to the County Code contained in the Rules of Procedure are all wrong. Finally, there is at least one example of an inconsistency within the Rules themselves.

2. Adhering to Procedural Requirements. Many of the requirements outlined in law and the Rules of Procedure are items that BOA members do not personally become involved in; for example, the filing and notice requirements are factors that, by their nature, are "enforced" by the BOA's office staff. Compliance with the remainder of the Rules of Procedure is largely up to BOA Chair, who presides over the BOA's hearings and rules on procedural requests and questions raised during the course of a BOA hearing. As the BOA's legal advisor, the County Attorney is also, at least in part, accountable for ensuring the BOA adheres to procedural requirements.

Interviews with BOA members and the BOA office staff indicate a general familiarity with the laws and Rules governing routine operating business. Many legal requirements have been integrated into daily routines followed by both BOA and staff. When an unusual or controversial procedural

Table 7

Examples of Inconsistencies Between BOA Rules of Procedure
(Appendix J) and Code Chapter 59

<u>ISSUE</u>	<u>RULE</u>	<u>CODE SECTION</u>
<u>Filing Requirements for Opposition Statements:</u>	2.5-f-1	59-A-4.49
The Rules specify that four copies of an opposition statement must be filed <u>15</u> days prior to the public hearing; the County Code specifies that "statements" (does not indicate number of copies) must be filed <u>10</u> days prior to the public hearing.		
<u>Time Frame for Complaint Inspections:</u>	11.2	59-G-1.3(b)
The Rules state that DEP shall investigate complaints alleging failure to comply with a SE grant and report to the BOA within <u>10</u> days; the County Code gives DEP <u>21</u> days to inspect, plus an additional <u>14</u> days to submit a written report to the BOA.		
<u>Procedure for Considering a Modification of an Approved SE:</u>	10	59-G-1.3(c)
The Rules state that modification requests are subject to at least <u>30</u> days notice to persons entitled to notice of the initial application and a public hearing; the Code states that if the Board determines that a proposed modification is such that it will not substantially change the "nature, character, or intensity of the use," the BOA may grant such a modification without a public hearing; notices of the BOA's ruling are then sent to interested parties, who within 15 days, may request a public hearing.		
<u>Scheduling of Show Cause Hearings in Non-Emergency Situations:</u>	11.3	59-6-1.3(e)
The Rules specify that unless an emergency is declared, a show cause hearing shall be held <u>not less than 15 nor more than 30 days</u> after a show cause notice is issued; the Code specifies that in non-emergency situations, the show cause hearing shall be scheduled <u>not less than 30 days</u> after the show cause notice is mailed.		
<u>Quorum Requirement for BOA Public Hearings:</u>	5.4	59-A-4.122
The Rules state that <u>four</u> members of the BOA shall constitute a quorum for hearing and deciding special exceptions and <u>three</u> members for hearing and deciding all other matters; the Code states that not less than <u>three</u> members of the Board shall constitute a quorum.		

matter is raised at a hearing, the law and or Rules may be consulted. On occasion, the BOA has requested advice on a procedural matter from the County Attorney's Office.

Document reviews and observation of routine BOA operations indicate that, while most requirements are generally followed, there are some notable instances of where required procedures are not consistently adhered to. For example, evidence reveals that:

- BOA records are not fully complete, up-to-date, and always accessible to the public (Rule 6 3.1);
- Notices of BOA hearings and decisions are not always sent to all parties entitled to notice (Rule 6 8.6; Code Section 59-A-4.46; Code Section 2A-6);
- BOA does not consistently pass a resolution to extend the time when a BOA decision is taking more than 30 days after the close of the hearing record or receipt of the hearing examiner's report (Rule 8.1; Code Section 2-113A(d); Code Section 59-A-4.62);
- The BOA's application of the "Rules of Evidence" is inconsistent (Rule 5.9; Section 2A-8); and
- The BOA does not consistently adhere to the procedural requirements of the Administrative Procedures Act when processing administrative appeals (Code Chapter 2A).

Of greater concern than any of the above examples is the overall absence of systematic oversight to ensure that major requirements for notice, hearing procedures and record keeping are met. Under current practice, unless an applicant or other public hearing witness raises a procedural error, BOA members are generally not aware of any problems. In sum, evidence indicates a management system unable to guarantee, at least to a reasonable degree of certainty, that procedural requirements are being met.

3. Perceptions from the Public. Interviews with members of the public who interact with the BOA on a regular basis revealed that approximately one-third are not aware that the BOA has written Rules of Procedure. About half of those who knew where to find the BOA's Rules of Procedure, however, were aware that certain sections of the Rules are outdated, and acknowledged that the Rules of Procedure need to be comprehensively reviewed and amended for consistency with current law.

Questions about whether the BOA follows legally required operating procedures elicited a broad range of perspectives. The great majority of variance applicants had no complaints about the BOA's adherence to rules, and only voiced objection that the process is time consuming and inconvenient. About 60 percent of those interviewed who had filed special exception petitions or administrative appeals voiced a general satisfaction with the degree that the BOA and its staff follows written requirements, and described the BOA's process as efficient and professional. The remainder of applicants interviewed, however, felt the BOA failed to follow specific notice, due process, and/or other procedural requirements.

Comments about the BOA's adherence to procedures from persons who appeared before the BOA in opposition to a particular case (or cases) revealed a more negative impression. In fact, about 60 percent of those interviewed who had appeared before the BOA in opposition to an appeal did not feel that the hearing in which they testified was "fair." A number of specific reasons were given such as: BOA members were not attentive or courteous, BOA members seemed to have already made up their mind, the BOA office staff gave out misinformation, or the BOA office staff was rude. Individuals also cited examples of cases where they believed proper written notice had not been given, posting requirements had been violated, or legitimate witnesses had been denied the opportunity to testify.

While some negative remarks about the BOA and its staff failing to follow procedures are undoubtedly valid, much of the negative feedback appears rooted in a basic lack of understanding about the BOA's authority and the purpose of a BOA hearing. Another portion of negative comments likely stem from disagreement with the outcome of one or more BOA decisions. Other negative remarks simply reflect unhappiness with the underlying law that authorizes a particular land use as a special exception at all.

D. Management of BOA Office

1. General. This section examines whether the BOA's office staff is organized and managed to adequately meet the BOA office's responsibilities, which include serving BOA members, serving the public, and performing the routine internal government functions required of all County offices.

2. Background of Staff Resources and Organizational Structure. The BOA was created in 1952 with two clerical staff positions. Today, the BOA office staff consists of:

- One Grade 18 Administrative Assistant I (working title, "Clerk to the BOA").
- One Grade 13, Office Services Manager¹;
- One part-time Grade 11, Principal Administrative Aide;² and
- One part-time Grade 16 Public Administrative Intern (PAI).

The PAI position was added in the Spring of 1987 on a trial basis for one year to provide BOA members with some assistance in drafting BOA opinions. Although Council authorized sufficient funds for a full-time PAI, the BOA chose to fill the position on a part-time basis.

¹ This position has been vacant since October 1, 1987; the process for filling it is currently underway.

² The Principal Administrative Aide currently works 30-35 hours per week.

Hiring staff to work in the BOA office involves the Office of Personnel, the BOA members, and the Council Staff Director. Once a position is created and funded, the Office of Personnel advertises the vacancy, screens applicants for minimum qualifications, and establishes an eligible list. In the past, the BOA members have conducted interviews and made a hiring recommendation to the Council Staff Director, who has signed official County personnel forms as the "appointing authority". As with all other merit system positions, an official job offer for a BOA office position is made by the Office of Personnel.

The law does not currently outline any administrative responsibilities for the BOA Chair or other BOA members. The degree of the BOA members' involvement in setting office policy and supervising the daily operations of the BOA office has varied over the years, depending upon the style and interests of the BOA Chair. Current practice is for the BOA Chair to loosely supervise the work of the BOA office staff, but only insofar as the staff is providing direct support to the BOA members themselves. The BOA Chair does sign off on official personnel forms as the supervisor of the Administrative Assistant I and PAI. The Administrative Assistant I signs off as the supervisor of the Office Services Manager and Principal Administrative Aide.

3. Administrative Support for BOA Members. BOA members seem satisfied with the administrative support they receive from the BOA office staff. Without exception, past and present BOA members praised the work of the office staff, noting that they rely heavily upon the office staff to prepare and maintain case files, schedule public hearings, set agendas, type BOA opinions, and prepare BOA resolutions. In addition, the Administrative Assistant I attends all BOA meetings, takes notes of proceedings, writes up the minutes of BOA action, and notarizes affidavits of posting.

Although generally satisfied with administrative staff assistance, individual BOA members expressed a need for additional staff help to draft opinions, provide legal advice, and represent the BOA on the various task forces and committees that meet to discuss proposed laws and text amendments that affect the BOA's work. BOA members felt it premature to judge whether the part-time PAI will be able to save BOA members a significant amount of time drafting opinions.

4. Serving the Public and Adhering to Legally Required Procedures. The BOA office staff serves an important function as the initial point of contact between the public and the BOA. The office staff is responsible for performing a significant public information and public relations role, i.e., providing general information about the BOA's laws and procedures, providing referrals to other offices where a question can be appropriately answered, and providing factual data about the BOA's schedule and specific BOA cases. The office staff also performs the intake function for all appeals and other requests filed with the BOA. In addition to ensuring that applications are complete and accompanied by the appropriate filing fee, the staff assembles the variance and special exception signs to be posted. The office staff also prepares, distributes, and maintains the BOA case files, and sends out notices of BOA hearings and decisions.

The BOA office staff is unquestionably hard-working and dedicated. While many members of the public interviewed voiced satisfaction with the service they received from the BOA office staff, others were sharply critical of the staff's conduct.

Out of 15 attorneys interviewed about their experiences with the BOA, only four voiced dissatisfaction with the BOA's staff. The great majority of lawyers who appear frequently before the BOA complimented the BOA staff for being very helpful, friendly, and courteous. Most felt that, given such a heavy caseload, the BOA office adequately performs administrative tasks; a number commented that office operations could benefit from greater use of automation, better record keeping, and perhaps additional staff.

Approximately half of the citizen applicants interviewed also found the staff to be helpful and reported being satisfied with the staff assistance they received. Another 25 percent felt they had not had enough contact with the staff to make any comment. However, the remaining 25 percent of applicants interviewed expressed dissatisfaction with the staff.

Comments about the staff made by citizens who have appeared before the BOA in opposition to a particular case revealed a more consistently negative attitude. More than half of the opposition parties interviewed voiced dissatisfaction with the staff assistance they received, often citing a specific incident to explain their displeasure. Critical comments about the staff's conduct included examples of:

- Staff giving out wrong or misleading information;
- Staff being rude and impatient;
- Staff being generally "not helpful";
- Staff voicing their personal opinions about individual cases;
- Staff not treating all members of the public equally; and
- When asked about who to hire as a zoning attorney, staff inappropriately referring citizens to specific lawyers or law firms, instead of to the County Bar Association.

As mentioned in the previous chapter about adherence to operating procedures, members of the public also cited specific examples of where staff is not consistently fulfilling public notice requirements. For example, in several cases, the appropriate parties failed to receive notice of a matter pending before the BOA. In several other cases, individuals who testified at a BOA hearing did not receive notice of the BOA's decision.

5. Internal County Government Functions. In addition to serving BOA members and the public, the BOA office is expected to perform all of the functions of any County government department or office. This includes preparing and defending an annual budget, filing standard personnel action forms, (hiring, promotions, evaluations), maintaining payroll records, transmitting revenue collected to the Department of Finance, and purchasing supplies.

Information gathered through document reviews, interviews, and observation indicates the BOA office staff is adequately performing certain internal government functions. However, evidence also reveals a number of problem areas, which appear to result from inappropriate staffing.

The BOA office operates with virtually no management supervision on a daily basis. Except for occasional visits during the week to do research or prepare opinions, the part-time BOA members are only in the office on public hearing days, and even then are preoccupied with attending the hearings and executive BOA sessions. In addition, because the BOA is run as an

independent office, the BOA office staff does not functionally answer to any legislative department director. Although the Council Staff Director is the official appointing authority for the BOA office staff, in order not to jeopardize the BOA's independence, the Council Staff Director has historically not overseen routine BOA operations. Therefore, by default, significant managerial, organizational and planning responsibilities have fallen to the Grade 18 Administrative Assistant I, as the most senior staff member in the BOA office.

The current BOA office staffing pattern is problematic because, in personnel policy terms, the Grade 18 Administrative Assistant I, is working "out of her class". The class specification for a Grade 18 Administrative Assistant I states that, "this is responsible staff administrative work providing general assistance to an administrator".¹

As explained above, in the case of the BOA, there is no administrator for the Administrative Assistant I to assist, and as a result, the Administrative Assistant I has ended up being responsible for functions that are not appropriate to expect an Administrative Assistant I to perform. For example, the Administrative Assistant I, without direction from a higher level administrator, must try and manage all daily office operations and supervise staff, prepare and monitor the BOA's annual budget, organize and manage all of the BOA's records, manage all of the BOA's finances, provide technical assistance to BOA members and the public (a task that requires considerable knowledge and understanding of laws, previous BOA opinions, and court rulings), serve as the BOA's liaison to the public and other government offices, and assume responsibility that BOA procedures conform with the many legal requirements for form and content.

Examples of problems that appear to result from inadequate staff resources and management are:

Use of Extensive Overtime. Payroll Department records indicate that one member of the BOA's staff has worked extensive overtime hours since 1985. Even without determining the "necessity" of working overtime hours, the fact that this employee logged 751.5 hours of overtime in 1985, 679 hours in 1986, and 356 hours in the first five months of 1987 is highly unusual and inappropriate. Besides the fiscal impact (\$13,175 in 1985, \$11,019 in 1986), working overtime equal to more than 1/3 of a workyear is poor management, and evidences an underlying workload and staffing problem.

Poor Records Management. Besides individual case files, the BOA's records are a combination of card files and looseleaf notebooks, all maintained manually without the assistance and advantages of automation. As mentioned earlier, records kept by the BOA staff are not fully complete and up-to-date. In addition to incomplete records of BOA action, there is inadequate control of case files. Many files are located in boxes scattered around the office, which contributes to a general lack of organization in the office.

¹ Source: Montgomery County Class Specification for Administrative Assistant I, Code No. 0152.

Inadequate Financial Controls. The BOA office receives a significant number of checks for filing fees and sign deposits, and a small amount of cash (\$300-400/year) for photocopying. The BOA received over \$200,000 in filing fees alone in FY 87.

The current practices of the BOA office violate basic principles of reasonable internal controls, and good financial management. For example, responsibilities for receiving money and making deposits are not divided and there is minimal (if any) review of financial record keeping; numbered receipts are not consistently used when handling cash; and monies collected are not transferred to the Department of Finance on a timely basis.

A review of FY 87 records indicated that the BOA transferred money (primarily checks, but some cash) to the Finance Department only ten times during the fiscal year; the amount of the transfers varied from \$4,000 to \$40,000. In some instances as much as three months lapsed between the dates money was transferred from the BOA to Finance.

Inadequate Management of Office Resources. In researching revenue collected through sign deposits, it became evident that no records are kept in the BOA office on the number of signs, where they are, or which ones are returned. Applicants for variances and special exceptions must leave a \$50 deposit for every sign they are required to post (certain properties require multiple signs), and a refund of \$37.50 is provided when the sign is returned. One of the problems voiced by both staff and citizens was "not enough signs." Because no records are kept, however, it is impossible to collect the data needed to make an informed recommendation to improve the situation.

In sum, all County offices are responsible for monitoring their own workload and operations, and initiating requests for changes or additional resources when necessary. The negative feedback from members of the public and the fact that internal management problems have gone unchecked suggest a fundamental flaw in staffing resources assigned to manage the BOA office.

E. Informed Decision-making

This section examines whether BOA members, prior to making decisions, have access to adequate legal advice and technical assistance.

1. Adequate Legal Assistance

a. Statutory Relationship. Section 213 of the County Charter states that the County Attorney shall be a legal advisor to the Council, and the legal advisor to the County Executive, all departments, and "other instrumentalities of the County Government." Section 213 also states that the County Attorney shall represent the County in all actions in which the County is a party. County Code Section 2-116, Employees, etc. states specifically that, the County Attorney shall serve as counsel to the BOA.

b. In Practice. An Assistant County Attorney from the Land Use Team¹ is assigned to provide advice to the BOA. Over the years, the relationship of the County Attorney as legal advisor to the BOA has varied depending upon the individual attitudes of BOA members and the workload of the various attorneys assigned to the BOA. In general, however, the County Attorney's posture can be described as reactive, this is, to provide advice when requested by BOA members, but not to offer unsolicited advice. Service to the BOA from the County Attorney's Office has included providing the BOA with legal advice, reviewing BOA opinions, and answering legal questions posed by the BOA staff.

When a variance or special exception decision of the BOA is appealed by a party to the Circuit Court, the County Attorney's office defends the County's position, which in these cases, is the BOA's decision. When an administrative appeal decision of the BOA is appealed, however, the County Attorney's office defends the County's position, which is the position of the department whose decision was appealed, and may or may not represent the decision of the BOA.²

Another facet of the County Attorney's office relationship to the BOA involves appearing before the BOA in administrative appeals. Serving in the capacity of legal advisor to the different County departments, the County Attorney's office represents the departments' position whenever an executive branch decision is appealed to the BOA.

Ruling on analogous situations at the State level, case law in Maryland has established that it is appropriate for the Office of Attorney General to have one Assistant Attorney General (AAG) acting as the legal advisor to a board or commission, and a second AAG presenting evidence before the same board or commission.³ In 1983, the Attorney General issued guidelines for adjudicatory proceedings, which establish operating guidelines for avoiding, to the greatest extent feasible, even the appearance of conflict in situations where the Attorney General's office is required to perform dual roles. By assigning separate AAGs, and establishing separate channels of supervision over AAGs performing advisory vs. presenting functions, the guidelines establish what is known as a "Chinese wall" mechanism to insulate staff attorneys from possible conflicts on representation.⁴

¹ Attorneys in the Office of the County Attorney are assigned to work on one of five "teams": Land Use, Claims, Civil Rights, Finance, and District Court.

² Court opinions have held that, in general, on appeal, the BOA itself is not a party.

³ An August 28, 1987 memorandum prepared at OLO's request, from Joyce R. Stern, Senior Assistant County Attorney, documents the relevant case law.

⁴ As explained in the AG's guidelines, the "Chinese wall" mechanism has traditionally been used by private law firms as a screening procedure that prevents an individual or section within a law firm from becoming involved in a matter handled by another individual or section of the law firm.

The County Attorney is not legally required to follow operating guidelines established by the State Attorney General's Office. However, in providing legal assistance to County boards, it appears logical for the County Attorney to establish a policy similar to that of the AG's office in order to minimize potential conflicts of interest.

Until very recently (October 1987), the County Attorney's practice was to rotate the responsibility for providing counsel to the BOA; specifically, assigning another attorney to provide legal advice to the BOA when the attorney who usually provides advice to the BOA was representing a department before the BOA in an administrative appeal. Although this staffing pattern was a good faith attempt to establish a "Chinese wall" mechanism, the assignment of duties was contrary to AG Guideline No. 3, which states that:

An AAG who serves as an advisor to a decision maker should not present cases to that decision maker throughout the period of time in which he or she serves as advisor.

In practice, the County Attorney's staffing assignments were also in conflict with AG Guideline No. 8:

In matters concerning a specific case, there should be separate channels of supervision and advisors up to the level of Deputy Attorney General.

Since October 1, 1987, however, there has been a reassignment of Assistant County Attorneys. At the time of this writing, the Assistant County Attorney assigned to advise the BOA will no longer be presenting cases before the BOA, and separate channels of supervision have been established up to the level of team leader. This recent change brings the County Attorney into greater conformance with the AG's conflict guidelines.

c. Need for Additional Legal Advice. The feeling that the BOA would benefit from additional legal advice was expressed by a majority of those interviewed, including lawyers who appear before the BOA, citizens, staff, and several BOA members. People differed, however, as to how much additional legal advice was required and where it should come from.

The majority of those interviewed expressed support for continued reliance upon the County Attorney as the source of legal advice for the BOA, but recommended a greater allocation of attorney time for the BOA from the County Attorney's office. A significant number of people recommended assigning an Assistant County Attorney on a full-time basis to the BOA, requiring the Assistant County Attorney to sit with the BOA during public hearings, and if requested by BOA members, allowing the attorney to help draft opinions. Those favoring continued reliance upon the County Attorney's office argue that it is consistent with the County's Charter and the practice of providing legal advice to other County boards and commissions such as the Ethics Commission and the Human Relations Commission. Moreover, although both advising the BOA and presenting cases before the BOA may appear troubling, it is not illegal, and staff support from the County Attorney can be structured to minimize any possible conflict of interest, i.e., assigning separate attorneys, maintaining a Chinese wall.

Other interviewees supported authorizing the BOA to hire outside independent (full or part-time) counsel, either to provide all legal advice, or, at a minimum, to provide advice on administrative appeals while the County Attorney continues to provide advice on variances and special exceptions. Those supporting some degree of outside legal assistance for the BOA based their recommendation largely upon the belief that it is an inherent conflict of interest for the County Attorney's office to both present cases before the BOA, as well as, advise the BOA. Furthermore, the feeling expressed by some is that even if two separate attorneys working in the County Attorney's office are assigned to perform the different functions, a perceived conflict of interest will remain.

2. Adequate Technical Assistance

a. Statutory Relationships. For assistance in reaching decisions on various and special exceptions, the County Code (Section 59-A-4.124) gives the BOA broad authority to "request technical service, advice, data, or factual evidence from the planning commission and the County government or from other sources." There is not a similar authority specified for assisting the BOA in administrative appeals, except that the BOA's Code of Ethics, as outlined in Code Section 2-109, states specifically that the provision prohibiting ex parte or private communications, " . . . shall not apply to technical advice or explanation rendered by governmental agencies at the request of a member or members of the board."

Code Section 59-A-4.46 requires the BOA to forward, within seven days of filing, a complete copy of all appeals and other requests filed with the BOA to the County Planning Board; and further requires that public notices for variances and special exception advise the recipient that a copy of the applicant's complete submission has been referred to the Planning Board for review and recommendation. Section 59-A-4.46 also requires the BOA to forward notice of all filings to the Department of Environmental Protection (DEP), Washington Suburban Sanitary Commission (WSSC), the State Highway Administration (SHA), and the Board of Education (BOE).

Code Section 59-A-4.48 specifically requires the County Planning Board or its staff to submit a report reviewing any petition for special exception to the BOA at least five days prior to the public hearing. In addition, Code Section 59-G-3.1 requires the County Planning Board to submit a similar report to the BOA on any appeal for a variances. The format of Section 59-G-3.1 makes it unclear, however, as to whether a Planning Board report is expected on all variance appeals, or only on variances involving floor area ratio (FAR) standards.

b. In Practice: General. A review of sample public hearing notices sent out by the BOA indicates that the five government agencies (Planning Commission, DEP, WSSC, SHA, BOE), designated by law to receive notice of all matters within the Board's purview, routinely receive notice of all special exceptions and variances, but do not consistently receive notice of administrative appeals.

A review of 235 randomly selected BOA case files (1979-1986) indicates that the only agency to regularly submit written comments for the

record on special exceptions is the Planning Commission. On occasion, comments on a variance or special exception appeal are received from DEP, WSSC or the SHA. There was no evidence of comments submitted by the BOE.

Interviews with past and present BOA members indicate that the Planning Commission's technical staff report is the BOA's primary source of objective, technical analysis of land use and planning issues. In addition, BOA members have, on occasion, consulted DEP staff for advice, primarily related to variance cases.

c. Technical Assistance from the Planning Commission Staff and Planning Board. In practice, one of the four copies of a variance and special exception appeal filed with the BOA is almost always sent within the required seven-day period directly to the Planning Commission's Development Review Division. The Zoning Coordinator in the Development Review Division assumes responsibility for coordinating the preparation of the technical staff report for all special exceptions, and selected variances, and screening the appeals to determine which ones are appropriate for additional review and recommendation from the Planning Board.

With the exception of accessory apartment petitions, most special exception petitions do receive both a technical staff report and about three-quarters receive a Planning Board recommendation. In addition, the staff and Planning Board have occasionally submitted comments and a recommendation on variances and administrative appeals that raise significant land use and planning issues.¹

The Zoning Coordinator prepares the technical staff report by coordinating comments from other staff divisions such as Transportation, Urban Design, and Community and Environmental Planning; Commission staff review may or may not include a site visit. For special exceptions deemed appropriate for Planning Board review, staff comments and recommendations are then presented both orally and in writing in public session to the Planning Board. The Planning Board's recommendation (which may or may not coincide with the technical staff recommendation) along with the technical staff report are then sent back to the BOA office, and incorporated into the official record.

The technical staff report and the Planning Board's recommendation are not consistently received by the BOA five days before the BOA's public hearing, as required by the zoning ordinance. A ten percent random sample of special exceptions filed between 1979 and 1986 revealed the technical staff report arriving at least five days before the public hearing approximately half of the time. For special exceptions where the Planning Board also submitted a recommendation, the five-day requirement was met only 35 percent of the time. The Planning Commission staff and Planning Board Chair are aware of this problem, and within the past six months have made some internal scheduling changes to improve the timeliness of their report and recommendations to the BOA.

¹ It is the Zoning Coordinator's view that the law (Code Sections 59-A-4.48 and Section 59-G-3.1) require the Planning Commission staff to submit a technical report to the BOA on all special exceptions, but only on variance appeals that involve floor area ratio (FAR) standards.

Even though it does not consistently arrive on time, interviews indicate that BOA members find the Planning Commission's technical staff report very helpful. For the most part, BOA members regard the technical staff reports as professional and objective. Several BOA members noted they find the technical staff reports are most informative on master plan issues, and least helpful on traffic questions. With the exception of one BOA member who noted he finds it confusing to receive sometimes conflicting advice, BOA members believe that receiving the Planning Board recommendation alongside the Planning Commission staff report is very constructive.

Interviews with members of the public indicate that individuals who appear regularly before the BOA are very familiar with the process surrounding the preparation of the Planning Commission's technical staff report and Board recommendation. In order to increase the probability of a favorable staff report and Planning Board recommendation, those who frequently appear before the BOA and Planning Board often interact with the Planning Commission staff to explain their proposal or objections, and to respond to concerns raised by the technical staff. In contrast, many individuals who have appeared before the BOA only once or twice do not understand how the Planning Board and Planning Commission staff relate to the BOA; several applicants interviewed were not even aware that their special exception petition had been publicly reviewed by the Planning Board.

The quality of the information provided to the BOA by the Planning Commission's staff received mixed reviews from the community. While a great majority of those interviewed described the technical staff report as fair, straightforward, and objective, a number of individuals criticized the reports for not fulfilling the legislative intent of providing balanced, professional, and timely information to the BOA. Specific complaints included that the technical staff report is not always objective and/or accurate, and that the technical staff report is not consistently available sufficiently before the public hearing to allow the applicant (or opposing parties) to prepare an adequate response.¹

On the other hand, at least a dozen individuals interviewed praised the Planning Board's technical staff for providing excellent reports to the BOA, but criticized the BOA for not listening to the recommendations provided by the technical staff. Although the BOA's decision does not agree with the Planning Commission's technical staff recommendation all of the time, a ten percent random sample of special exceptions decided by the BOA between 1979 - 1986 showed the BOA's decision to grant or deny consistent with the Planning Commission's staff recommendation in 94 percent (66 out of 70) of the

¹ A related problem highlighted by a number of those interviewed comes when applicants modify their plans to respond to concerns raised by the Planning Commission staff and/or Planning Board; when changes to plans are submitted right before, or even on the day of, the BOA's public hearing on the petition, individuals appearing in opposition do not always feel they have been given ample opportunity to prepare testimony based on the latest set of plans.

cases. A review of 30 special exceptions decided by the BOA since January 1987 shows the BOA's decision correlating with the technical staffs recommendation in 25 (83 %) out of the 30 cases.

The appropriate role for Planning Board members and Planning Commission staff during BOA public hearings is an area of unresolved controversy between the Planning Board and certain BOA members. With rare exception, neither Planning Board members nor Planning Commission staff personally participate in BOA hearings. On several occasions, the BOA has subpoenaed Planning Commission staff to attend a public hearing in order to clarify a technical staff report. However, interviews and observations of BOA proceedings indicate continuing differences of opinion concerning:

- Whether it is appropriate for a Planning Commission staff member to testify as a witness before the BOA on behalf of an applicant or opposing party; and
- Whether the Planning Board Chair, upon request to the BOA, must be allowed to testify in a public hearing.

F. Enforcement

1. Statutory Requirements. The County Code assigns the Department of Environmental Protection (DEP) with the primary responsibility for enforcing BOA decisions on variances and special exceptions:

- Code Section 59-A-5.1 states that DEP cannot issue a building permit unless the property has appropriate zoning for the proposed structure; this means that if a variance or special exception is required, then DEP cannot issue the permit until the BOA has rendered a final decision and the BOA's conditions are satisfied; and

- Code Section 59-G-1.3(b) requires DEP to investigate all complaints regarding special exceptions, and to make written findings and recommendations back to the BOA.

To enable DEP to perform the above functions, the law requires the BOA to send DEP copies of all requests for variances and special exceptions, and copies of all BOA decisions. In addition, DEP is required to maintain official zoning maps updated with BOA decisions.

In contrast to special exceptions and variances, enforcement of administrative appeal decisions is delegated to the department whose decision was appealed. For example, for an administrative appeal on a decision originally made by the Fire Marshal, the Fire Marshal assumes responsibility for implementing the BOA's decision. Although evaluating this aspect of enforcement across all departments was beyond the scope of this report, there was no evidence presented to suggest there is a problem with the BOA's decision on administrative appeals being appropriately enforced.

2. Enforcement of Variances and Special Exceptions In Practice. Within DEP, the Division of Construction Codes Enforcement (DCCE) is responsible for enforcing the zoning ordinance. The Permit Processing Section is responsible for not issuing building permits and/or use and occupancy

permits until BOA decisions are made and conditions met; the Field Services Section is responsible for conducting routine inspections, as well as, inspections of special exceptions in response to complaints.

By a memorandum of understanding executed in 1984 between DEP and the Department of Housing and Community Development (DHCD), DHCD's Code Enforcement Unit is responsible for conducting annual inspections of accessory apartments, which require a special exception from the BOA. DHCD also investigates complaints received about accessory apartments and makes a report back to the BOA.

As required, DCCE does receive copies of all requests for variances and special exceptions (except for accessory apartments which are sent to DHCD) filed with the BOA. Field inspectors do not always rely upon the files sent to DEP, however, and often stop by the BOA office before going out to ensure they are conducting inspections based upon the BOA's final decision and the applicant's final plans. Although the communication between DEP, DHCD, and the BOA staff appears reasonably good, some citizens complained they had received one answer from DEP or DHCD, and a conflicting one from the BOA office staff.

DEP staffing levels do not allow for every special exception to be inspected annually. There are currently four zoning inspectors responsible for enforcing the entire zoning ordinance. In practice, this allows DEP to investigate complaints received about special exceptions, and to conduct routine inspections of special exceptions only periodically. The average no-complaint special exception is likely to be inspected once every three years. The exception to this is accessory apartments, which are inspected annually by DHCD staff.

3. Public Perceptions of Enforcement on Variances and Special Exceptions. The major complaint voiced by members of the public concerning DEP's enforcement of the zoning ordinance relates to the County's general policy of "no action" between the time a violation of the zoning ordinance is cited and the BOA's decision. Take for example, an individual who receives a notice of violation from DEP charging them with operating a business in a residential zone without the requisite home occupation special exception; DEP directs the alleged violator to petition for a special exception from the BOA. Assuming that the individual does file for a special exception, there could easily be six months (or longer if a hearing continuance is requested and granted) before the BOA renders a decision to grant or deny the special exception. During this time period, DEP's general operating practice is to allow the use to continue.

Citizens complain that DEP's policy of doing nothing during this waiting period allows an illegal (and perhaps objectionable) activity to continue. The alternative would be for the County to go to Court and request that a stop order be issued until the BOA decision is made. According to the Assistant County Attorney responsible for code enforcement, the practicalities of code enforcement and experience show that, unless an activity is posing a clear and present public danger, judges are unlikely to order an individual to close down a business while the matter is pending before the BOA. Moreover, the County hesitates to issue a citation for the alleged illegal use because that could start two bodies (District Court and BOA) deliberating upon the same issue.

G. Record of Appeals

1. General. As outlined in the scope of this report, this evaluation does not assess the substance or quality of BOA decisions. However, from both a process and workload point of view, it is relevant to review the frequency and outcome of BOA decisions that are appealed to the courts pursuant to Code Section 2-114, which states that:

"Any decision by the Board of Appeals may, within 30 days after the decision is rendered, be appealed by any person aggrieved by the decision of the board and a party to the proceeding before it, to the Circuit Court for the County which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require."

The law goes on to state that, "Any party to the proceedings in the Circuit Court aggrieved by the decision of the Court may appeal from such decision to the Court of Appeals within 30 days from the date thereof."

2. Number and Outcome of BOA Decisions Appealed Since 1979. As outlined in Table 8, 100 (5.3%) of the 1,865 decisions rendered by the BOA from January 1, 1979 - June 30, 1987 were appealed to the Circuit Court. Of these 100 decisions appealed to Circuit Court, 43 were special exceptions, 43 administrative appeals, and 14 were variances.

As a percent of BOA decisions made in each of these categories, the rate of appeals of administrative appeals far exceeds that for special exceptions and variances. Over one-third of administrative appeal decisions were appealed to Circuit Court compared to seven percent of all special exceptions decisions and only one percent of variances decisions. Because such a large number of administrative appeals are dismissed or resolved before a BOA decision is made, looking at the number of administrative appeals that are appealed as a percent of cases filed instead of as a percent of decisions reduces the appeal rate of administrative appeals to 19 percent (43 out of 227).

Out of the 100 BOA decisions appealed to Circuit Court, only 13 were reversed by the Circuit Court; 46 BOA decisions on appeal were affirmed by the Circuit Court and 31 were either withdrawn or dismissed. The 13 reversals represent less than one percent of the almost 2,000 decisions rendered by the BOA during the past eight years.

Out of the 59 cases where the Circuit Court either affirmed or reversed a BOA decision, 23 (39%) were then appealed to the Court of Special Appeals. Out of these, four were dismissed and five are pending; of the remaining 14 cases, the BOA's decision was affirmed seven times and reversed seven times. Ten of the second level appeal cases were special exceptions and 13 administrative appeals. Since 1979, no variances have been appealed from the Circuit Court to the Court of Appeals.

Table 8
Number, Type, and Outcome of BOA Decisions
Appealed to the Circuit Court - January 1, 1979 - June 30, 1987

Types of Case	Number of BOA Cases Filed	Number of BOA Decisions ^a	Number of BOA Decisions Appealed	Number of BOA Decisions Reversed	Number of BOA Decisions Affirmed	Number of BOA Cases Withdrawn or Dismissed ^c	Number of BOA Cases Pending Court Decision
Special Exception	711	643	43	7	17	16	3
Administrative Appeal	227	112	43	4	25	11	3
<u>Variance</u>	<u>1,133</u>	<u>1,110^b</u>	<u>14</u>	<u>2</u>	<u>4</u>	<u>4</u>	<u>4</u>
Total	2,071	1,865	100	13	46	31	10

^a Number of BOA decisions include only decisions to grant or deny a request and not decisions to dismiss or cases pending BOA decision.

^b The decision figure for variances is based on a 2% dismissal rate of cases found in the random sample.

^c Dismissal of a Circuit Court case is due to a procedural error found by the judge in the filing of the case or the motion of one or both of the parties to withdraw.

Source: BOA's records and information provided by the Office of the County Attorney.

3. Discussion. The data show that in the relatively few cases where the BOA's decision is challenged in court, the BOA's decision, for the most part, is upheld. According to attorneys familiar with the BOA appeal process, a low appeal rate and a high rate of being upheld is to be expected in Maryland for judicial review of decisions made by a locally appointed administrative board.

When reviewing an appeal from an administrative board or agency such as the BOA, the Circuit Court sits as an appellate tribunal. In Germenko vs. County BOA, 257 Md. 706 (1970), the Court wrote:

"We have repeatedly stated that it is not the function of the courts to zone or rezone, and that courts will not substitute their judgement for the expertise of zoning officials. Only when there is no room for reasonable debate or where the record is devoid of substantial supporting facts are the courts justified in reversing a decision of an administrative body or declaring its action arbitrary, capricious or illegal."

Several members of the community interviewed noted that the relatively low number of BOA appeals should not be used as a measure of public satisfaction with the operations of the BOA. Examples were cited where citizens very much wanted to appeal a BOA decision, but did not go forth with an appeal because of the time and money involved. Moreover, the fact that the judicial standard of review of the BOA's decision is narrow may also serve as a deterrent.

H. Other Issues

This section reviews BOA member compensation and compares the structure of Montgomery County's BOA to similar boards in other charter counties in Maryland.

1. BOA Member Time and Compensation

a. General. The number of hours required to serve on the BOA and how those hours are spent effect numerous issues discussed throughout this evaluation. The time commitment required and compensation received no doubt influences who applies to serve on the BOA, and who serves on the BOA profoundly affects BOA operations. Based upon information gathered through interviews with past and present BOA members, members of the community, and data gathered about other adjudicatory boards and commissions, this section reviews BOA member time and compensation.

b. BOA Member Time and Compensation. Interviews with current BOA members indicate that, on average, each spends 14 hours per week on BOA-related activities. The BOA Chair spends closer to 20 hours per week. BOA member time is divided among three basic activities: (1) attending public hearings, (2) participating in executive BOA sessions, and (3) researching and writing opinions.

All BOA members agree that the most time-consuming function of serving on the BOA is sitting through six to eight hours of public hearings every week. An additional two to three hours each week is spent in executive session discussing cases and approving opinions. BOA members' estimates of

hours spent researching and writing opinions range from a low of two hours per week to a high of eight hours per week. On top of public hearings, executive sessions, and writing opinions, the BOA Chair spends, on average, an additional six hours per week preparing for BOA meetings and doing other administrative work.

Several BOA members indicated that when they were appointed, they had not realized that serving on the BOA required such a large time commitment. While a person's economic status should, ideally, not be a criterion for serving on the BOA, serving on the BOA means time away from home or a job, and in addition to opportunity costs, there are actual costs incurred such as transportation, lunches, babysitting, etc. Two BOA members stated that the time required to serve on the BOA had forced them to abandon income-producing activities they had originally thought they could continue while serving on the BOA.

Code Section 2-111 states that each member of the BOA shall be paid at such rate as the Council shall fix from time to time by resolution. BOA member compensation was initially set at \$1,500 per year in 1952, and since then has been adjusted upwards periodically.

Most recently, Council Resolution 9-527A, passed in December 1979, set the annual compensation for the BOA Chair at \$9,500, and for all other BOA members at \$8,000. Resolution 9-527A included a cost-of-living (COL) provision so that every year, the BOA's salary is adjusted on the first Monday in December by a percentage which is 50 percent of the percentage by which the Consumer Price Index for all urban consumers for the Washington Metropolitan area for September shall have changed from the preceding September. Current compensation is \$9,811 per year for BOA members and \$11,649 per year for the BOA Chair; it will be appropriately adjusted upwards to reflect the COL increase on December 1, 1987.

If, in fact, BOA members devote an average of 14 hours a week for 50 weeks a year (the BOA typically takes a two or three week vacation) to BOA business, then based upon their compensation of \$9,811 per year, BOA members are compensated at a rate of approximately \$14 per hour. If the Chair puts in closer to 20 hours per week for 50 weeks a year, then based upon annual compensation of \$11,649, the Chair is compensated at a rate of \$11.65 per hour (see Table 9).

The 1979 resolution establishing BOA compensation also states that no member of the BOA is entitled to an increase in compensation during the unexpired term of any existing appointment. This reflects Article 3, Section 35 of the Maryland Constitution which prohibits the salary or compensation of any public officer to be increased or diminished during his term of office.

c. Comparisons. Table 10 compares average hours required to serve and the level of compensation across ten adjudicatory boards and commissions in the County¹. As the data indicate, there is a broad range in the hours required to serve on the various boards and commissions as well as in the compensation rates. Comparatively:

¹ "Compensation" is defined as payment for services rendered as a board or commission member, and does not include reimbursement for actual expenses incurred.

Table 9

Average Time Board of Appeals' Members Spend on Board Business and Compensation: 1987

	<u>Average Public Hearing/Meeting Time per Week</u>	<u>Average Additional Time per Week</u>	<u>Average Total Time per Year³</u>	<u>Annual Compensation⁴</u>	<u>Average Compensation per Hour</u>
BOA Members:	10 hours	4 hours ¹	700 hours	\$ 9,811	\$14.01
BOA Chair:	10 hours	10 hours ²	1000 hours	\$11,649	\$11.65

¹ Additional time spent primarily on opinion-writing.

² Additional time spent primarily on opinion-writing, preparing for hearings, drafting correspondence and performing other administrative work on behalf of the BOA.

³ Based upon 50 weeks/year because the BOA typically takes a two or three week vacation.

⁴ From December 1, 1986 - November 30, 1987; compensation will increase by 50 percent of CPI on December 1, 1987.

Source: Interviews with Board of Appeals members serving in 1987.

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Table 10

Comparison of Compensation Among Adjudicatory Boards and Commissions: 1987^a

Board/ Commission	Number of Members	Appointed by:	Term	Reimbursement of Expenses	COLA Provision	Last Increase of Base Comp.	1986-87 Compensation ^b	Average Total Hours per Year	Average Comp. per Hour
Board of Appeals	5	Council	4 yrs.	None	Yes	1979	Members: \$9811/yr. Chair: \$11649/yr.	Members: 700 Chair: 1000	Members: \$14.01 Chair: 11.65
Animal Matters Hearing Bd.	10	County Exec., confirmed by Council	2 yrs.	Eligible, but not often collected	No	-	None	96	None
Human Relations Commission	11	County Exec., confirmed by Council	3 yrs.	Mileage/ parking	No	1986	Panel members: \$35/per mtg. ^c	100	\$8.40
Commission on Landlord/ Tenant Aff.	12	County Exec., confirmed by Council	3 yrs.	Mileage/ parking	No	1974	\$35/per mtg. not to exceed \$3000/yr.	144	\$8.75
Merit System Protection Board	3	Council	3 yrs.	None	Yes	1980	Members: \$7360 Chair: 8341	Members: 312 Chair: 312	Members: \$23.59 Chair: 26.73
Property Tax Assessment Appeal Bd.	3 (+ one alternate)	Governor, based upon Council & CE nomination	5 yrs.	Parking	No	1984	\$20 per hour, not to exceed \$120 per day	720	\$20.00
Sign Review Board	3	County Exec., confirmed by Council	3 yrs.	None	No	1968	\$30/per mtg. not to exceed \$1500/yr.	72	\$10.00
Montgomery Co. Planning Board	5	Council: (3) CE: (2) (members)	4 yrs.	Up to \$1200 per yr.	Yes	1987	Members: \$12,600 ^d Chair: 75,000	Members: 1500 Chair: 2880	Members: \$ 8.40 Chair: 26.04
Ethics Commission	5	County Exec., confirmed by Council	4 yrs.	Eligible, but not often collected	No	-	None	Members: 96 Chair: 120	None
Board of License Commissioners	5	County Exec., confirmed by Council	4 yrs.	None	No	1986	\$6,000/yr.	100	\$60.00

^a Adjudicatory boards and commissions are those which have as a major function the adjudication of factual and legal matters. With the addition of the Planning Board, Ethics Commission, and Board of License Commissioners, the groups on this table are those identified as "adjudicatory" by the Citizens Advisory Committee established in 1980 to review compensation of boards, committees and commissions.

^b Compensation is defined as payment for services rendered as a committee member; it does not include reimbursement for actual expenses.

^c In performing its adjudicatory function, the Human Relations Commission sits in panels made up of three members each; panel members receive \$35 per meeting; HRC members who do not serve on a panel receive no compensation.

^d For Planning Board members appointed after July 1, 1987.

Source: Interviews with BOA members, Planning Board Chair, and staff from departments providing support to other boards and commissions.

- BOA members put in more time each year than other adjudicatory board members, except for Planning Board members;
- BOA members receive more compensation on an annual basis than most other adjudicatory board members, but less than Planning Board members and Property Tax Assessment Appeal Board members; and
- In terms of compensation per hour worked, BOA members receive more than some other adjudicatory board members (i.e., Human Relations Commission, Ethics Commission), but less than others (i.e., Merit System Protection Board, Board of License Commissioners).

The most recent comparative review of the workload and compensation levels of all County boards, committees, commissions and advisory councils was conducted in 1980 by a Citizens Review Committee appointed by the Council. The Citizens Committee concluded that the County should not attempt to compensate appointed board members, "at a rate comparable or equivalent to that which they would receive in the private sector. The monies given to the various committees cannot and should not be considered salaries."¹ The Citizens Committee recommended, however, that the County should develop a unified set of standards for determining annual and per diem compensation rates, and that there should be a continuing effort to monitor the workload and compensation of County committees. To date, no standards have been developed, and another Citizens Review Committee has yet to be appointed.

Compared to BOAs in other charter counties in Maryland, Montgomery County's level of compensation is very similar to that in Baltimore County, but greater than that in Anne Arundel, Howard, or Prince Georges Counties (see Table 11). An American Planning Association (APA) survey in June 1985 of big city zoning boards (populations over 500,000) revealed that approximately 60 percent of the cities surveyed compensate their BOA members in amounts ranging from \$25 per meeting in Atlanta to \$58,161 per year in New York City. An APA survey in May 1986 showed that 75 percent of smaller cities (populations 16,000-262,000) still depend entirely upon volunteers to serve on their zoning boards of appeal.

2. Comparison of Montgomery County BOA to Other BOAs in Maryland

Tables 11 and 12 compare the structure and authority of Montgomery County's BOA and Hearing Examiner to that in four other charter counties in Maryland. The data show that:

- While all five counties compared have a Board of Appeals appointed by the County Council, the number of members ranges from three (Prince Georges) to seven (Anne Arundel, Baltimore), and compensation of BOA members ranges from \$25 per meeting (Howard) to \$11,649 per year (Montgomery's BOA Chair);
- The frequency of BOA meetings ranges from two evenings a month for the entire BOA (Prince Georges) to various panels of the BOA meeting three days a week (Baltimore); and

¹ 1980 Citizens Review Committee report on Workload and Compensation of County Boards, Committees, Commissions, and Advisory Councils.

Table 11

Comparison of Boards of Appeals and Zoning Hearing Officers
in Five Charter Counties in Maryland: 1987

<u>Jurisdiction</u>	<u>BOARD OF APPEALS</u>				<u>ZONING HEARING OFFICER</u>		
	<u># Members</u>	<u>Appn't By</u>	<u>Compensation</u>	<u>Meeting Time</u>	<u># People</u>	<u>Appn't By</u>	<u>Merit/Non-merit</u>
Montgomery County	5	County Council	Chair: \$11,649/yr Members: \$9,811/yr	All day Thurs. plus extra hearing days when needed	2 Hearing Examiners	County Council	Non-merit
Anne Arundel County	7	County Council	\$5200/yr plus \$40 per meeting	Every Wed at 2:00 p.m.; Every Thurs. at 6:30 p.m.	1 Zoning Hearing Examiner	County Executive	Non-merit
Baltimore County	7 (Sits in panels of three)	County Council (Each Council member appoints 1 BOA member)	Chair: \$11,000/yr Members: \$10,000/yr	3 days per week, 10 a.m. to 5 p.m.; (Because sit in panels, each BOA member averages 2 days per week)	1 Zoning Commissioner and 1 Deputy Zoning Commissioner	County Executive, (confirmed by County Council)	Non-merit
Howard County	5	County Council	\$25 per Meeting	2 evenings per week	None*		
Prince Georges County	3	County Council	Chair: \$7,000/yr Member: \$6,000/yr	2 evenings per month	2 Zoning Hearing Examiners	County Council	Merit

* The Charter Review Commission in Howard County is studying whether to establish a Hearing Examiner.

Source: Interviews with staff representing jurisdictions surveyed.

Table 12

Comparison of Authority to Hear and Decide Variances, Special Exceptions, and
Administrative Appeals in Five Charter Counties in Maryland

<u>Charter County, Maryland</u>	<u>Variances Hearing & Decision by:</u>	<u>Appeal of Variance Decision to:</u>	<u>Special Exceptions Hearing & Decision by:</u>	<u>Appeal of Special Exceptions Decision to:</u>
Montgomery ¹	Board of Appeals ²	Circuit Court	1) Most categories heard and decided by BOA. 2) Selected categories heard and decided by Hearing Examiner. 3) Three categories heard by HE with written recommendation to County Council who makes final decision.	1) Circuit Court 2) BOA 3) Circuit Court
Anne Arundel	Zoning Hearing Officer	BOA, then Circuit Court	Zoning Hearing Officer	BOA, then Circuit Court
Baltimore	Zoning Commissioner	BOA, then Circuit Court	Zoning Commissioner	BOA, then Circuit Court
Howard	Board of Appeals	Circuit Court	Board of Appeals	Circuit Court
Prince Georges	Board of Appeals ³	Circuit Court	Zoning Hearing Examiner ³	County Council

¹ County Code Section 2-112 authorizes the BOA, upon the approval of three members, to refer any matter before the BOA to a Council-appointed hearing examiner in the Office of Zoning and Administrative Hearings for report and recommendation back to the BOA.

² Except for that the Director of the Department of Environmental Protection is authorized to grant setback and sideyard variances in connection with a moderate price development. (Code Section 59-G-3.2)

³ The Zoning Hearing Examiner is authorized to hear and decide certain cases that involve both a special exception and a variance.

Source: Interviews with BOA members, Planning Board Chair, and staff from departments providing support to other boards and commissions.

Table 12 - contd.

<u>Charter County, Maryland</u>	<u>Rezoning Hearing and Decision by:</u>	<u>Appeal of Rezoning Decision to:</u>	<u>Administrative Appeals Hearing and Decision by:</u>	<u>Appeal of Administrative Appeals to:</u>
Montgomery	Hearing and written recommendation by HE to County Council who makes final decision.	Circuit Court	Board of Appeals	Circuit Court
Anne Arundel	Zoning Hearing Officer	BOA, then Circuit Court	Board of Appeals	Circuit Court
Baltimore	Board of Appeals	Circuit Court	Board of Appeals	Circuit Court
Howard	County Council	Circuit Court	Board of Appeals	Circuit Court
Prince Georges	Hearing and written recommendation by HE to County Council who makes final decision.	Circuit Court	Board of Appeals	Circuit Court

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- Montgomery and Prince Georges Counties each have a Hearing Examiner, Anne Arundel County has a Zoning Hearing Officer, and Baltimore has a Zoning Commissioner; these officials are appointed either by the Council (Montgomery, Prince Georges), County Executive (Anne Arundel), or both (Baltimore). Howard County is studying whether to appoint a zoning hearing examiner.

While the BOAs in all five counties compared are authorized to hear and decide administrative appeals (with appeal directly to Circuit Court), the other responsibilities delegated to the Boards of Appeals and Hearing Examiners (called Hearing Officer in Anne Arundel County and Zoning Commissioner in Baltimore County) varies. For example:

- Variances are heard and decided by the Board of Appeals in Montgomery, Howard, and Prince Georges Counties, but heard and decided by the Zoning Hearing Officer in Anne Arundel County and the Zoning Commissioner in Baltimore County, with appeal to the Board of Appeals;

- Special exceptions are heard and decided by the Board of Appeals in Howard County, the Zoning Hearing Officer in Anne Arundel County, Zoning Commissioner in Baltimore County, and Hearing Examiner in Prince Georges County, and a combination of the BOA, Hearing Examiner, and Council in Montgomery County; while the appeal of the hearing officer's decision first goes to the BOA in Montgomery, Anne Arundel, and Baltimore Counties, it goes to the County Council in Prince Georges; and

- Rezoning are heard and decided by the County Council in Howard County, the Board of Appeals in Baltimore County, and a Zoning Hearing Officer in Anne Arundel; in Montgomery and Prince Georges Counties, the Hearing Examiner holds a hearing and makes a recommendation to the Council who makes the final decision.

V. RELATED MATTERS

Although outside the immediate scope of this evaluation, the following issue that came to OLO's attention while collecting data for this report deserves mention:

Creation of Public Zoning Defender. The idea of establishing an independent counsel to appear before the BOA, the Planning Board, and the courts on behalf of the interests of the public in general, and specifically to defend any duly enacted master plan, has been around in some form or another since the early 1970's. This proposal, with a potential effect far beyond the BOA, may deserve further study. Baltimore County has had a similar position of "People's Counsel" since 1974.

VI. CONCLUSIONS

A. General

1. Montgomery County citizens continue to support the Board of Appeals (BOA) as a Council-appointed citizen board authorized to hear and decide variances, special exceptions, and administrative appeals based upon guidelines and conditions set forth in County law.

2. Over the years, however, the operations of the BOA and management of the BOA office have not changed sufficiently to accommodate an increased workload, and the laws and rules of procedure governing the BOA have not been kept up-to-date or internally consistent.

3. In order to maintain community confidence in the BOA as the appropriate body to resolve variances, special exceptions, and administrative appeals, changes are required to accommodate the BOA's increased workload and to minimize problems with the routine operations of the BOA.

B. BOA Members

1. The procedure for appointing BOA members parallels that for other Council-appointed boards and commissions. Montgomery County is similar to most other local governments in that there are no legally mandated skills, education, or background requirements for serving on the BOA.

2. The law is unclear as to whether BOA members' legally required financial disclosure statements must be available for public inspection. One section of the law (Code Section 2-113) states that there is to be public disclosure by the County Council of the financial disclosure statements of BOA appointees, but another (Code Section 19A-12) classifies BOA financial disclosure statements among those to be maintained confidentially by the Ethics Commission.

3. Comparatively, the time required to serve on the a BOA is less than the time required to serve on the Planning Board, but more than four times greater than the average time required to serve on other adjudicatory boards and commissions in the County. On average, BOA members each spend 14 hours every week on BOA business. BOA members' time is divided into approximately 10 hours attending public hearings and deliberating upon cases in executive session and approximately four hours drafting BOA opinions. On average, the Chair spends an additional six hours per week preparing for hearings, drafting and reviewing opinions, and completing other administrative work.

4. The Council most recently adjusted BOA members' compensation in December 1979, at which time an annual cost-of-living increase provision was added. Today, BOA members receive \$9,811 per year and the BOA Chair receives \$11,649 per year. On an annual basis, this is more than other adjudicatory board members except for Planning Board members and Property Tax Assessment Appeals Board members. On a per hour basis, BOA members are compensated at approximately \$14 per hour while the BOA Chair receives \$11.65 per hour; this is more than some other adjudicatory board members, but less than others.

5. The County has not undertaken a comprehensive review of the workload and compensation of all County boards, committees, commissions and advisory councils since 1980. A Citizen Advisory Committee's recommendation in 1980 to establish a unified set of standards for determining compensation rates has not been implemented.

C. Workload and Timeliness of BOA Processing

1. The BOA's workload is composed primarily of hearing and deciding variances, special exceptions and administrative appeals, the number of which filed annually with the BOA has more than doubled during the past eight years from 167 cases in 1979 to 348 cases in 1986. The total number of cases filed in 1987 will likely top 400. In addition to hearing and deciding these cases, the BOA holds various other miscellaneous hearings which have remained a relatively small but steady component of the BOA's workload.

2. Analysis of data on the type, increasing number, and complexity of appeals filed with the BOA since 1979 suggests that the BOA's workload is not likely to decrease, and is more than likely going to increase. Although some of the BOA's increased workload is due to an abundance of one particular kind of appeal being filed within a short time period (i.e., accessory apartment petitions, taxicab license appeals), the changing nature of the zoning ordinance and other County laws is such that, on top of a routine workload, there is likely always to be a significant number of some kind of new and different cases filed with the BOA.

3. Variance appeals have increased at a steady rate over the past eight years and continue to constitute over half of the BOA's caseload. However, because variances are generally the most routine and least controversial component of the BOA's work, they consume approximately one-fourth of the BOA's time. The average variance appeal submitted today is very similar to the average variance appeal submitted eight years ago.

4. The number of special exception petitions filed has increased more erratically than variances and currently account for approximately 35 percent of the BOA's caseload and probably half of the BOA's time. Although a portion of the BOA's special exception cases can be described as routine and non-controversial, as a group, special exceptions have grown more complex over the past eight years as evidenced by increased citizen opposition, increased participation of expert witnesses, and greater use of professionally prepared consultant reports.

5. Administrative appeals have also increased, but continue to constitute less than 15 percent of the BOA's caseload. As a group, administrative appeals probably consume close to 25 percent of the BOA's time. Administrative appeals are different from special exceptions and variances in that they can involve a broad range of County procedures and programs, must be processed according to the more formal procedures outlined in the Administrative Procedures Act (Code Chapter 2A), and tend to be the most litigious.

6. For many years, the BOA's average (mean) processing time (time intervals between filing, public hearing, and final BOA decision) frequently has exceeded legally mandated requirements. In addition, since 1979, the number of cases that greatly exceed legally mandated requirements has

increased significantly. While in 1979, only seven percent of special exception and administrative appeals took six months or longer from filing to decision, this increased to 22 percent in 1986.

7. Average processing time was, more often than not, longer in 1986 than it was in 1979; specifically, the average administrative appeal took approximately one month longer and the average variance ten days longer. The median processing time for special exceptions and administrative appeals was 110 days in 1979 and 127 days in 1986.

8. One reason that the average processing times for BOA cases have not increased more than they have is due to additional hours being spent by BOA members every week on BOA business. Although the number of days per year that the BOA schedules for public hearing has not increased significantly, the length of the BOA agenda has grown from an average of four cases in 1979 to eight cases in 1986.

D. BOA's Relationship with Office of Zoning and Administrative Hearings (OZAH)

1. A review of legislative files indicates that amending the law in 1975 to authorize the BOA to refer cases to a Council-appointed hearing examiner in OZAH for report and recommendation was enacted as a way to alleviate the BOA's workload. However, it is only within the past two years that the BOA has referred any significant number of BOA cases to OZAH. More than half (53%) of the 85 cases referred to OZAH from January 1, 1979 - June 30, 1987 were referred within the first six months of this year.

2. When cases are referred to OZAH, BOA time spent on those cases is reduced. In only six (7%) of the 85 cases referred to OZAH between 1979 and mid-1987 did the applicant request oral argument, of which the BOA has granted five. The BOA has not concurred with OZAH's recommendation in only two (2.4%) out of the 85 cases and in most instances, the BOA has even adopted OZAH's report as the actual text of the BOA's decision.

3. Although some citizens have criticized the timeliness of OZAH's report back to the BOA, records indicate that in only one out of 85 cases referred to OZAH from January 1, 1979 - June 30, 1987 did the receipt of OZAH's report back to the BOA exceed the statutory 30-day limit. Because the 30-day limit is defined as 30 days after the close of the record, there may be additional cases where the record was allowed to remain open an inappropriately long time; judging this was, however, beyond the scope of this report.

4. Community sentiment about referring cases to OZAH for report and recommendation is mixed. While approximately half of those interviewed expressed support for greater use of OZAH as a workload alleviator, the other half of those interviewed did not support referring cases to OZAH as a preferred solution for reducing the BOA's workload.

E. Procedural Requirements and Conduct of BOA Hearings

1. Operating procedures for the BOA are outlined in at least four different sections of the County Code. The document that is currently distributed to the public as the Rules of Procedure for the BOA is neither up-to-date nor complete.

2. The BOA's Rules of Procedures have not been comprehensively reviewed or updated since they were initially promulgated in 1974. In addition to the fact that the Rules of Procedure contain numerous cross-references to sections in the County Code that have been renumbered or amended, there are substantive inconsistencies between requirements and procedures outlined in the Rules and those outlined in the County Code.

3. While the BOA and BOA office staff appear to follow most legally required operating procedures, requirements for notice, record keeping, and hearing procedures are not consistently met. Moreover, there is no systematic oversight to ensure that legally required operating procedures are adhered to by the BOA or the BOA office staff on a regular basis.

4. There is a wide range of opinions concerning the fundamental fairness of BOA public hearings. Some feel that the BOA conducts very "fair" hearings; specifically, that hearing procedures are well explained, BOA members are courteous and ask all the "right" questions, and that the Chair exercises an appropriate degree of control over the proceedings. Others, however, feel that the BOA conducts very "unfair" hearings; specifically, that BOA members are rude, inattentive, inconsistent, and accord unequal treatment to people appearing before them. Moreover, some feel the BOA Chair exercises too much, (or too little), control over the proceedings.

5. While a significant portion of citizen criticism of the BOA's operations is undoubtedly valid, much of the negative feedback appears rooted in a basic lack of understanding about the BOA's authority and the purpose of a BOA hearing. Another portion of negative comments likely stems from disagreement with the outcome of one (or many) BOA decisions. Other negative remarks simply reflect unhappiness with the underlying law that authorizes a particular land use as a special exception at all.

F. Staffing and Management of BOA Office

1. Staff resources for the BOA's office have not kept pace with increases in the BOA's workload. The BOA office is run much the same way today as it was ten years ago (and in certain respects probably 25 years ago).

2. The BOA office staff consists of a Grade 18 Administrative Assistant I, a Grade 13 Office Services Manager, a part-time Grade 11 Principal Administrative Aide, and a part-time Public Administration Intern. In contrast to other adjudicatory boards and commissions in the County, the BOA does not have a professional level staff person with the skills, education, expertise, and time to manage the BOA office and provide assistance to BOA members.

3. The BOA office staff is unquestionably hard-working and dedicated. However, although BOA members and some members of the public appear satisfied with the support they receive from the BOA office staff, evidence indicates serious shortcomings in the overall management of the office. The current level of staff resources is not consistently providing high quality service to the public and not adequately fulfilling internal County government responsibilities.

4. The BOA office staff operates independently with little or no supervision. BOA members do not perceive management of the BOA office, or the efficiency and professionalism of staff operations as functions they are responsible for.

5. The facilities for the BOA are inadequate. Specific problem areas include inadequate office space for BOA staff, BOA members, BOA files, and the public, the need for a copying machine accessible to the public, and the need for copies of the County's Master Plans accessible to BOA members and the public.

6. Since FY 84, filing fee revenues have exceeded total BOA office operating costs. In FY 86, the BOA generated excess revenue of \$53,000 and in FY 87, \$49,000.

G. Adequacy of Legal Assistance

1. The BOA would benefit from access to more and consistent legal advice, specifically on procedural matters and in writing opinions.

2. The County Charter and Code specify that the County Attorney is the BOA's legal advisor. The degree of support for the BOA from the County Attorney's office has varied over the past ten years, largely depending upon the workload of the Assistant County Attorney assigned to the BOA, and the desire of BOA members for legal advice. In general, however, the County Attorney's office philosophy has been to provide legal assistance to the BOA only in response to specific BOA requests.

3. Designating the County Attorney as the BOA's legal advisor on variances and special exceptions does not appear to cause public concern. However, designating the County Attorney as the BOA's legal advisor on administrative appeals has been perceived as a conflict of interest because the County Attorney's office is simultaneously responsible for presenting a case before the BOA and advising BOA members.

4. Whether attorneys from the County Attorney's office can be both presenters and advisors is not a unique issue to Montgomery County or the BOA. In 1983, the State Attorney General (AG) issued written guidelines for how the AG's office could both advise and present case before an adjudicatory body while minimizing perceived conflict of interest concerns. Although the County Attorney is not required to follow AG guidelines, recent staffing changes have brought the County Attorney's relationship with the BOA into greater conformity with the AG guidelines.

H. Adequacy of Technical Assistance

1. The BOA relies more upon the Planning Commission's technical staff more than any other single source for professional and independent analysis of special exception and variance appeals. There is a statutory requirement for a technical staff (or Planning Board) report to be submitted to the BOA on special exceptions and variances five days before the public hearing. (There is some question as to whether the law requires a technical staff report on all variance appeals, or only on variance appeals involving floor area ratio standards.) The BOA's Code of Ethics specifically states that the ex parte rules do not apply to technical advice or explanation rendered by governmental agencies at the request of a member or members of the BOA.

2. Although the BOA's decision does not agree with the Planning Commission's technical staff report in all cases, a ten percent random sample of special exceptions decided by the BOA between 1979 - 1986 showed the BOA's decision to grant or deny consistent with the Planning Commission's staff recommendation 94 percent of the time. In special exception decisions rendered during the first six months of 1987, the BOA's decision was consistent with the Planning Commission's technical staff recommendation 83 percent of the time.

3. The statutory relationship between the Planning Commission's technical staff, the Planning Board, and the BOA is not universally understood by individuals who appear before the BOA. Those who appear frequently in front of the BOA understand the role of the technical staff and the Planning Board on variances and special exceptions, and often interact with Planning Commission staff to explain their proposal or concerns, and to respond to issues raised by the technical staff in order to increase the probability of a favorable technical staff report and Planning Board recommendation. Those unfamiliar with the process may not even be aware that the technical staff is preparing a report and the Planning Board is discussing their appeal in public session.

4. Almost all special exception petitions (except those for accessory apartments) and variance appeals that the Planning Commission staff evaluate as raising significant land use or planning issues receive a technical staff report; approximately 75 percent of special exceptions also receive a Planning Board recommendation. The report and recommendations do not, however, consistently arrive the legally required five days before the BOA's public hearing. The technical staff and Planning Board Chair are conscious of this problem and have made some changes in their procedures this year to improve their response time.

5. The appropriate role for Planning Board members and Planning Commission staff during BOA public hearings is an area of unresolved controversy between the Planning Board and certain BOA members. As it stands now, Planning Board members and Planning Commission staff only rarely participate in BOA hearings. One problem is the practical conflict presented by the fact that the Planning Board and BOA both hold meetings on the same day of the week (Thursday).

6. Although it was beyond the scope of this report to evaluate the substance of Planning Commission reports, the great majority of BOA members, citizens, lawyers, and other government staff interviewed believe the Planning Commission's staff report provides the BOA with professional and unbiased information that helps the BOA make judicious decisions. A handful of those interviewed did, however, question the objectivity of certain technical staff reports.

I. Enforcement

1. BOA decisions on special exceptions and variances are enforced by DEP. Administrative appeal decisions are generally enforced by the department involved in making the decision that was appealed.

2. Under current practices and staffing levels, there is a reasonable degree of assurance that variances and special exceptions will initially conform to the conditions of the BOA's decision. DEP's process (with assistance from DHCD inspectors on accessory apartments) for initial inspection for compliance with BOA-imposed conditions appears adequately designed.

3. Although DEP has, in general, responded quickly to investigate complaints received about special exceptions, the DEP staff is not able to inspect all special exceptions on an annual basis. Although DHCD staff has been able to maintain a program of inspecting accessory apartments on an annual basis, given four zoning inspectors for the entire County. Routine special exception inspections are conducted, on average, every three years.

4. There is some public criticism of the County's general policy to allow a potentially illegal land use to continue pending a BOA decision. At present, there is no mechanism for ensuring an expedited hearing date on such cases.

J. Record of Appeals

1. The relatively few BOA decisions that are appealed to the Courts are generally upheld. Out of almost 2,000 decisions rendered by the BOA between January 1, 1979 and June 30, 1987, only 100 (5%) have been appealed and only 13 of those appealed have been reversed by the Circuit Court. These 13 reversals represent less than one percent of the BOA's decisions over an eight-and-one-half year period.

2. The BOA's record on appeals is in line with the general experience in Maryland for court review of decisions made by locally appointed quasi-judicial boards.

K. Comparisons Among BOAs in Maryland

1. The structure and authority delegated to the BOA in Montgomery County is not identical to that in other charter counties in Maryland.

2. Boards of Appeal in Anne Arundel, Baltimore, Howard, Prince Georges and Montgomery Counties vary as to the number of members, frequency of meetings, compensation, and authority to hear and decide variances and special exceptions.

VII. RECOMMENDATIONS

In order to perform its current statutory functions efficiently and effectively, certain changes are required so that the BOA can better handle a workload that has increased significantly over the past decade. If, within two or three years, improvements are not seen, then the Council should consider modifying the basic structure and/or authority of the BOA.

For the present, however, this chapter offers specific recommendations for changes in the laws and Rules of Procedure governing the BOA, the staff resources supporting the BOA, and other aspects of the BOA's operations. Implementing these changes will require a combination of legislative, appropriation, and administrative action. The shared goal of these changes is a BOA that:

- Always meets legally mandated requirements, especially those for notice, due process, and record keeping;
- Hears and makes final decisions on cases in a timely manner; specifically, schedules hearings and completes BOA action within the legally required time frames;
- Maintains good relations with members of the community; specifically, consistently serves all individuals in a professional and courteous manner and makes a reasonable effort to ensure that the conduct of the BOA during hearings and the actions taken by the BOA are well-communicated;
- Monitors its own workload and operations, and initiates requests for changes or additional resources when necessary;
- Takes actions and makes decisions based upon consistent and sound legal and technical advice; and
- Maintains ongoing and appropriate lines of communication with Council and other County government agencies, so that BOA members fully understand the legislative intent of laws governing BOA decision-making and problems with the laws are communicated back to lawmakers.

A final goal is for the time spent by BOA members to be used efficiently, and for BOA members themselves to feel they are compensated fairly for their time spent on BOA business.

Recommendation A: Technical Review and Update of BOA's Basic Laws and Rules of Procedure

1. The sections of the County Code in Chapters 2 and 59 governing the BOA, and the BOA's Rules of Procedure (codified in the County Code as Appendix J) need to be reviewed and revised so that they are internally consistent, logically arranged, and written in a style that minimizes duplication and is clearly understood by the general public. This review should include clarifying what constitutes an administrative decision that can be appealed to the BOA.

2. It would be appropriate for the Council to request the County Attorney, as the legal advisor to the BOA, to undertake this primarily technical review, and present the BOA and Council with a draft of recommended amendments.

3. When revised, the BOA's Rules of Procedure should be a document that can be distributed to the public as a complete and clearly written guide to what the BOA is, and how it functions. Consideration should also be given to developing a pamphlet that summarizes the statutory role of the BOA and how the BOA relates to other government agencies.

Recommendation B: Clarify Status of Financial Disclosure Statements

1. The law should be amended to clarify that BOA members' financial disclosure statement are to be available for public review.

2. This can be accomplished by amending Code Chapter 19A-12 to include BOA members among those designated to file public sworn statements with the Ethics Commission. Alternatively, pursuant to Code Section 19A-12(j), the Council could pass a resolution designating that financial disclosure statements of BOA members are to be public statements. (Note: A Council Resolution introduced October 20, 1987 designates that financial disclosure statements of BOA members are to be maintained by the Ethics Commission as available to the public.)

Recommendation C: Additional Resources for BOA Office

1. Create New Position of Executive Secretary. The BOA needs a full-time professional level staff person with the skills, education, and expertise to manage the BOA office and provide assistance to the BOA members. Although County personnel regulations specify procedures for the Office of Personnel to determine the exact title and grade of this job, for purposes of this report, the new position being recommended will be referred to as the Executive Secretary to the BOA.¹

The hiring process for the BOA's Executive Secretary should include standard merit system advertising and establishment of an eligible list by the Office of Personnel. The BOA members should then interview applicants on the eligible list and make a hiring recommendation to the Council Staff Director, who should continue to serve as the official appointing authority. Responsibility for providing immediate supervision and

¹ The title Executive Secretary is used because that is the working title of the professionals currently responsible for planning, developing, coordinating and directing staff activities in support of other County boards such as the Merit System Protection Board, the Fire Rescue Commission, and Board of Investment Trustees. It is possible that the new position being recommended for the BOA will not require the creation of a new class.

providing direction to the Executive Secretary on all programmatic functions should be delegated to the BOA Chair (see Recommendation D). If requested by the BOA Chair, the Council Staff Director should provide guidance for performing internal County government functions such as budget preparation and annual personnel evaluations.

Specific recommendations for the Executive Secretary's job responsibilities and minimum qualifications for the Executive Secretary's position are detailed in Appendix D.

2. Increase Use of Automation. The BOA should undertake an assessment and redesign of office functions to take full advantage of opportunities available through the use of automation. If deemed necessary, the Council should favorably consider a request for outside consultant assistance, and if necessary, a request for additional hardware and software.

3. Evaluate Classification of Existing Clerical Positions and Future Needs. If no changes towards automating office operations are made, then the BOA office may need additional clerical assistance immediately. However, because significant improvements from automation are anticipated, a recommendation for additional clerical help should be postponed and evaluated in light of how the BOA office functions after efficiencies through automation have been implemented. At that time, it would also be appropriate for the Office of Personnel to conduct a classification evaluation of the existing clerical positions in the BOA office.

4. Evaluate Continued Need for Public Administration Intern (PAI) Position. It is too soon to evaluate the benefits or continuing need of the PAI position, which has been filled on a part-time basis since July 1987. By February 1, 1988, as part of the FY 89 budget deliberations, the BOA should report to the Council on the pros and cons of continuing the PAI position.

5. Improve Facilities. The BOA office needs renovations to existing space and perhaps allocation of additional space to meet the needs of staff, BOA members, and the public. In addition to adequate office space, two specific issues to be addressed are the need for a copying machine in the BOA office accessible to the public (for a reasonable fee per page), and the need for Master Plans in the BOA office.

Recommendation D: Expand Role and Increase Compensation for BOA Chair

1. The pay differential between the BOA Chair and other BOA members should be increased. In return, the BOA Chair should be expected to assume greater responsibility for supervising the staff and providing leadership to the BOA to move the work of the BOA along more expeditiously.

2. Specifically, the BOA Chair's annual compensation should be increased from \$11,649 to at least \$14,000. If the Chair works an average of 20 hours per week, and BOA members continue to work an average of 14 hours a week, a \$14,000 level of compensation would at least bring the Chair's salary into parity with that of other BOA members. (Note: A Council Resolution introduced on October 20, 1987 proposes increasing the BOA Chair's annual compensation up to \$15,000.)

3. In addition, Code Chapter 2, Article V, County Board of Appeals, should be amended to outline the authority and responsibility of the Chair to preside at all hearings and executive sessions of the BOA, to supervise the BOA office staff, and to provide direction for managing the BOA's work. (As recommended earlier, the Council Staff Director should continue to be the official appointing authority for the BOA staff; all direct supervision, including ongoing personnel actions (i.e., annual increments, performance evaluations) could, however, be delegated to the BOA Chair, who would work in consultation with other BOA members and the Council Staff Director.)

Recommendation E: Transfer Primary Responsibility for Drafting Opinions from BOA Members to Staff

1. To allow BOA members to focus more time and effort on the hearing and decision process, drafting of BOA opinions should become primarily a staff function.

2. Working under the direction of BOA members, the responsibility for drafting BOA opinions can be shared among the BOA's Executive Secretary (see Recommendation C), the County Attorney assigned to assist the BOA (see Recommendation G), and, if necessary, continued employment of a Public Administration Intern (see Recommendation C).

3. The staff assigned to drafting BOA opinions should take full advantage of economies from the use of forms and automation.

4. In addition to staff assistance in writing opinions, the BOA should more frequently request parties to submit draft findings of fact and conclusions of law. Requesting parties to submit such drafts is an accepted practice in many courtrooms and is already allowed under the BOA's current Rules of Procedure (Rule 8.3).

Recommendation F: Alleviate BOA Workload

The BOA's workload must be alleviated in order to permit (1) the BOA to remain a citizen board that meets only one day a week; (2) the processing of cases in a timely manner; and (3) some maneuvering room in the BOA's schedule to, for example, permit hearing continuances to be held within a reasonable time period and, to allow for scheduling of expedited hearings when necessary. The following are three recommendations for alleviating the BOA's workload:

1. Simplify Process for Deciding Uncontested Variances. Code Chapter 59 should be amended to authorize the BOA to decide uncontested variance appeals without a public hearing. With the addition of initial notice and posting requirements, the process could be similar to the one now followed by the BOA when granting minor amendments or modifications to the terms or conditions of a special exception. After the notice period, the BOA would have the discretion to make decisions on uncontested variances in executive session. A copy of the BOA's decision would then be transmitted to the petitioner, the Planning Commission, DEP, Department of Finance and all parties currently entitled to initial notice. The decision would state that any party, within 15 days, may request a public hearing on the Board's action.

2. Greater Use of Authority to Refer Cases to Office of Zoning and Administrative Hearings (OZAH). The BOA should continue to use OZAH as a workload alleviator. Although public sentiment concerning the referral of cases to OZAH is mixed, the advantages appear to outweigh potential disadvantages, especially given that referring cases to OZAH is an option available under current law. Experience to date indicates that BOA time is saved on cases that are referred to OZAH. Data on cases referred to OZAH reveal only a handful requiring oral argument before the BOA, and show the BOA concurring with the Hearing Examiner over 95 percent of the time.

To have any significant impact on the BOA's workload while allowing the Hearing Examiner to schedule and plan his workload, the BOA should develop a policy of routinely referring certain types of cases to OZAH. To a small extent, this has already happened this year with the BOA's decision to refer all accessory apartment petitions and impact fee appeals to OZAH. In addition to providing the Hearing Examiner with some predictability to his workload, applicants can be informed ahead of time to expect their public hearing to be conducted by a single hearing examiner instead of by the BOA. Moreover, the hearing examiners in OZAH can develop an expertise in handling certain types of cases for the BOA.

While the ultimate decision of which cases to refer to OZAH should remain with the BOA, as a group, administrative appeals appear to be a very logical portion of the BOA's caseload to be referred routinely to OZAH because:

- o Public hearings on administrative appeals must be run according to Chapter 2A, Administrative Procedures Act, which, in contrast to other public hearings held by the BOA, require adherence to the more formal hearing procedures that OZAH follows on a regular basis;

- o While a technical staff report from the Planning Commission is provided to the BOA on special exceptions and significant variance cases, the BOA has no outside staff support to sort out the facts in administrative appeals, which are frequently technical legal disputes over the interpretation of statutory requirements and procedures; and

- o Compared to variances and special exceptions, a higher percentage of administrative appeals are brought with the assistance of an attorney and a higher percentage of decisions appealed to Circuit Court; because by definition, the County's side is also represented by an attorney (from the County Attorney's Office), there tend to be more technical and legal procedural questions raised that OZAH is well equipped to handle.

3. Establish Committee to Recommend Whether Additional Categories Should be Delegated to OZAH for Hearing and Decision. Code Section 59-G-1.12 already authorizes OZAH to hear and decide petitions for special exceptions for selected categories of uses in certain zones; decisions of OZAH in these cases can be appealed to the BOA. The Council should appoint a committee of government and citizen representatives to recommend whether any additional categories of special exceptions (and/or administrative appeals) are appropriate to delegate to the OZAH for hearing and decision, with appeal to the BOA.

Recommendation G: Additional Legal Assistance Consistent with Attorney General Guidelines to Minimize Perceived Conflict of Interest

1. One attorney from the County Attorney's Office should be assigned to meet the legal needs of the BOA. This attorney should be available to provide the BOA with oral or written opinions, to provide procedural advice to the BOA before and during public hearings, and to alert the BOA and BOA office staff to statutory requirements that must be met. When requested by the BOA, this attorney should also be available to draft or review BOA opinions, especially in cases dealing with complex legal issues. If necessary, the County Attorney should be appropriated additional funds to support this enhanced level of service to the BOA.

2. During the time an Assistant County Attorney is assigned to advise the BOA, he/she should never appear before the BOA as a presenter. To the extent feasible, the State Attorney General's conflict guidelines for adjudicatory proceedings should be followed.

3. The Assistant County Attorney assigned to the BOA should sit with the BOA during all of the BOA's public hearings, and if the BOA feels it would be helpful, also during the BOA's executive sessions. During this time, the Assistant County Attorney should be available to provide the BOA with feedback on adhering to the BOA's laws and Rules of Procedures.

4. The Assistant County Attorney assigned to the BOA should also keep the BOA up-to-date about relevant court decisions. The Assistant County Attorney should prepare a briefing for incoming BOA members to explain the parameters of the BOA's authority and the case law involving the BOA and BOA decisions.

Recommendation H: Improve Technical Assistance

1. Notice of all BOA filings should be sent, as required by law, (Code Section 59-A-4.46) to the Planning Board, DEP, WSSC, SHA, and the BOE. If it is decided that sending notice of all BOA filings to these agencies is no longer appropriate, then the law should be amended to reflect this change.

2. Code Section 59-G-3.1 should be amended to clarify whether the Planning Commission is required to submit a technical staff report on all variance appeals, or only on selected ones.

3. If the recommendation to develop a short pamphlet describing the role of the BOA is adopted (see Recommendation A), then this pamphlet should include an explanation of how the Planning Commission's technical staff report and Planning Board's recommendation relate to the BOA's public hearing and final decision.

4. The Planning Commission's technical staff and Planning Board should continue efforts to improve their preparation time so that the BOA consistently receives the Planning Commission's staff report and Planning Board's recommendations at least five days before the BOA's public hearing, as legally required.

5. The appropriate role for Planning Board members and Planning Commission staff during BOA public hearings should be clarified, if necessary by amending State and/or County law.

6. To the extent that the BOA needs technical assistance in connection with a specific case before the BOA, and has exhausted all avenues for receiving such assistance from the County government and other County and bi-County agencies, then the BOA should be authorized to hire an outside expert. Requests for funding should be considered by the Council either as part of the BOA's annual budget, or on a case-by-case basis.

Recommendation I: Change Hearing Day and Improve Scheduling of Hearing Continuances and Expedited Hearings

1. To reduce the conflicts presented for staff, attorneys, and citizens who must appear in front of both the Planning Board and the BOA, the BOA should not continue to schedule its hearings on the same day of the week (Thursday) as the Planning Board. Because the Council meets on Tuesday and the Planning Commission staff schedules subdivision reviews for Monday, the most appropriate day for BOA public hearings seems to be Wednesday. (The BOA already has the authority to set its own meeting day.)

2. The BOA should restructure its scheduling mechanism so that continuances of public hearings can be placed on the BOA's calendar within a reasonable period of time. In addition, the BOA should establish a mechanism for scheduling expedited hearings.

Recommendation J: Annual Meetings with (1) County Council and (2) Planning Board

To encourage ongoing and appropriate communication, the BOA should have an annual meeting with the Council and another meeting with the Planning Board. (The BOA has met with the Planning Board for the past several years, and met once with the Council during the FY 88 budget discussions.) Without violating the ex parte rules on any particular case, the major purpose of these meetings would be to generally discuss the legislative intent, along with any perceived problems, of the laws governing the BOA's decision-making.

Recommendation K: Need to Address Larger Issue of Board Member Compensation

1. As recommended above (see Recommendation D), the BOA Chair's compensation should be increased to at least \$14,000 in order to bring the Chair's compensation into parity with that for other BOA members.

2. Recommending the appropriate level of other BOA member compensation at this time is impossible because of the larger issue of inequity in the compensation rates among all County boards, committees, and commissions. The Council should direct a review of the workload and compensation of all County boards, committees, and commissions, and establish a unified set of standards for determining compensation rates.

APPENDIX A

Administrative Appeals Specified in County Code Section 2-112, (3)-(20)
Powers, Duties, and Functions of the Board of Appeals
1952 - 1987

<u>Administrative Decision Subject to Appeal</u>	<u>Decisions¹ Made by:</u>	<u>Year Added</u>	<u>Year Deleted</u>
Building Code	DEP	1952	
Child Care Home License	Health	1954	
Construction of Excreta Disposal Plant Permits	DEP	1952	1979
Electrical Contractors License Law	DEP	1958	
Hospital, Sanitarium, Nursing Home, and Care Home License	Health	1952	
Hotel License Law	Health	1958	
Individual Water Supply and Sewage Disposal System Permits	Health	1979	
Places of Amusement and Amusement Enterprise Licenses	Health	1956	
Plumbers and Gas Fitters License Law and Plumbing and Gas Fitting Code	DEP	1958	
Private Education Institution Licenses	Health	1952	
Removal of Diseased Tree Orders	DOT	1952	
Removal of Garbage, Ashes, Rubbish and Weed Orders	DEP	1952	
Removal of Obstructions to Vision Along Highway Orders	DOT	1952	
Rent Supplement and Assistance Program Law ²	DHCD	1984	
Restaurant Permits	Health	1952	
Riding School and Stable Licenses	Animal Control	1953	
Taxicab Registrations	DOT	1952	
Uninhabitable or Dangerous Building Orders	DOT	1952	
"Other Appeals"	Unspecified	1958	

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- ¹ DEP = Department of Environmental Protection
Health = Health Department
DOT = Department of Transportation
DHCD = Department of Housing and Community Development
DFRS = Department of Fire and Rescue Services

- ² Due to a change in Chapter 41A, the BOA no longer hears appeals under the rental assistance law.

Source: Montgomery County Codes and Laws of Montgomery County, 1952 - 1987.

SPECIAL EXCEPTION CATEGORIES ADDED AND DELETED
1953 - 1987

- The County Council created the Board of Appeals (BOA) in 1952. In 1953, the Council passed Zoning Ordinance 2-125 giving the BOA general authority to hear and decide special exceptions.
- Throughout the years, the Council has added and deleted special exception categories; unless otherwise indicated on this chart, the BOA has the authority to hear and decide the special exception categories listed.

SPECIAL EXCEPTION CATEGORIES ADDED
1953-1955

Airport, airpark, and air field	Off-street parking of motor vehicle in connection with commercial or industrial use*
Animal hospital, veterinary clinic, & animal boarding place	Public utility and major structure including radio and TV broadcasting
Antique shop	Recreational or entertainment establishment of a commercial nature
Apartment hotel	Riding stable*
Automobile parking lot, commercial*	Rifle, pistol, and skeetshooting range, outdoor
Boardinghouse*	Rifle & pistol range, indoor
Cemetery**	Rooming house*
Cemetery, animal	Sand, gravel, & clay pit; rock or stone quarry
Child care home	Sawmill
Dumps, sanitary fills, & incinerator	Scientific society headquarters
Dwelling in an industrial zone	Swimming pool, commercial
Educational institution, private	Swimming pool, community
Eleemosynary & philanthropic inst.	Teahouse or restaurant
Golf course, country club, Private club & service organization	Temporary structure*
Golf course, miniature; golf & baseball driving range*	Theatre, legitimate
Home occupation	Theatre, outdoor**
Horticultural nursery & commercial greenhouse	Tourist home
Hospital, nursing & care home, medical and dental clinic*	Trailer coach park, tourist cabin camp and motel
Medical practitioner's office	

* In 1961, the Council passed zoning ordinance 4-104 authorizing the director of the Department of Inspection and Licenses to hear and decide some or all cases in these special exception categories. In 1975, the Council transferred this authority to the Office of the Hearing Examiner. Decisions of the director and the hearing examiner can be appealed to the BOA.

**In 1975, the Council passed zoning ordinance 8-26 transferring the authority to hear these special exceptions to the Office of the Hearing Examiner with final decision by the District Council.

SPECIAL EXCEPTION CATEGORIES ADDED

1956-1965

Art or cultural center, non-commercial
Automobile filling station
Automobile sale & service
Dairy
Funeral parlor or undertaking estab.
Hotel, resort, rural
Off-street parking of motor vehicle
on land reserved for street or
highway purposes*
Research institution, noncommercial

SPECIAL EXCEPTION CATEGORIES ADDED

1966-1975

Automobile, truck & trailer rental
lot, outdoor
Automobile, light trailer & light-
duty truck rental lot, outdoor
Community redevelopment area at
request of County Council**
Commercial bank
Drive-in restaurant
Fertilizer mixing plant
Heliport
Helistop
Housing for elderly or handicapped
Pet shop
Recreational campground
Theater, indoor

SPECIAL EXCEPTION CATEGORIES ADDED

1976-1987

Abbattoir
Accessory apartment
Accessory dwelling on land
primarily in agricultural use
Airstrip associated with a farm
Alcoholic beverage manufacturing
Appliance repair shop
Auction facility
Auditorium or convention hall
Auto storage lot
Blacksmith
Boat sales, indoor
Boat repair & service
Bowling alley
Bus terminal
Cable communication system
Car wash
Electric power transmission &
distribution line

1976-1987 - contd.

Family burial site
Farm machinery: sales, storage or
service
Farm supply
Farm tenant mobile home*
Fire station, publicly supported
Fraternity & sorority house
Furniture or upholstery repair shop
Grain elevator
Group residential facility for
housing exceptional person
Hospice care facility
Hotel and motel
Laboratory, medical or dental
Milk plant
Mobile home, single-wide
Office, general
Office, professional, nonresidential
Parking facility, off-street, at
location more than 500 ft. walking
distance from the entrance to
nonresidential establishment to be
served
Pipeline, above ground
Retail & service establishment
Restaurant, free-standing
Retail estab. in office building
Retail estab. in multiple-family
dwelling
Roadside farm market
Roofing contractor
Sanitarium
Sawmill
Secondary agricultural processing,
not otherwise specified
Stock yard
Temporary structure (added roadside
farm market and wayside stand for
sale of farm products
Tire, battery and accessory store
Trade, artistic or technical school
Village newspaper
Warehousing
Winery

Appendix - contd.

SPECIAL EXCEPTION CATEGORIES DELETED
1953-1974

None

SPECIAL EXCEPTION CATEGORIES DELETED
1966-1975

Dumps
Teahouse or restaurant

SPECIAL EXCEPTION CATEGORIES DELETED
1976-1987

Airport, airpark, and airfield
Apartment hotel
Automobile parking lot, commercial
Commercial bank
Dairys
Off-street parking of motor vehicle
 on land reserved for street or
 highway purposes
Rooming house
Scientific society headquarters
Trailer coach park, tourist cabin
 camp and motel
Travel agency

70/19

APPENDIX C

Number of Special Exceptions - Filed by Category
1979 - 1987

<u>CATEGORY</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>Jan. 1- June 30 1987</u>	<u>Total</u>
Accessory Apartment						137	101	18	6	262
Antique Shop		1	2		1			2		6
Auto Repair				1	2	1				4
Auto Filling Station	3	2	3	8	2	6	1	4	1	30
Auto, Truck & Trailer Rental, Outdoor				1						1
Boardinghouse					1				1	2
Cemetery, Animal			1							1
Child or Elderly Day Care Center		3	2	6		6	9	13	9	48
Clinic, Medical & Dental	1		2	1	1	4	3			12
Drive-In Restaurant	4	2	3	1		3	6	3	2	24
Educational Inst., Private	5	5	3	3	1	1	2	1	2	23
Eleemosynary & Philanthropic Inst.	3	4	1	2		1		3		14
Farm Supply			1					1		2
Golf Course, Country Club, Private Club, & Service Organization	3	4	4	1		2	1	1		16
Group Residential Facility for Housing Exceptional Person			3		2	2		1		8
Heliport & Helistop					1					1
Home Occupation	5	1	3	1	4	2	5	17	12	50
Horticultural Nursery or Related Use		1	1	6	4	5	5	2	7	31
Hospital	1		1			1				3
Hospital, veterinary	2		1	2	2		1	2	1	11
Hotel & Motel									1	1
Hotel, resort, rural			1		1	2	1	1		6
Housing for Elderly/ Handicapped	1	3		2	3	1	2	7	3	22

Appendix C - contd.

<u>CATEGORY</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	Jan. 1- June 30 <u>1987</u>	<u>Total</u>
Medical Practitioners' Office	5	3	2	1	1			5	1	18
Newspaper, Village Nursing & Care Home	2	1	1		1	2	2	1	1 1	1 11
Office, professional, non-residential	6	1		1		1		2		11
Off-Street Parking	2		1	4		1	2	1	1	12
Pet Shop	1									1
Public Utility Building & Public Utility Structure (including Radio & TV Broadcasting Station & Towers)		1	1		2	5	1	4	1	15
Recreational or Entertainment Estab.	1	3		3	2				1	10
Residential Dwelling in an Industrial Zone									1	1
Restaurant, free-standing						1	1	5	1	8
Retail establishment in an Office Building	2	2	2	1		4		1	1	13
Riding stable	1	6	1	2	1	2	1	4	2	20
Swimming pool, community			1							1
Temporary structure (farm products stand)	1	1	1			2		1		6
Two-family dwelling								1	3	4
Warehousing						1				1
Total:	49	44	42	47	32	193	144	101	59	711

Source: Board of Appeals card files.

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Appendix C - contd.

Special Exception Categories for Which no Petition was Filed From
January 1, 1979 - June 30, 1987

Abattoir	Hospice care facility
Accessory dwelling on land primarily in agricultural use	Laboratory, medical or dental
Airstrip associated with a farm	Milk plant
Alcoholic beverage manufacturing	Mobile home, single-wide
Ambulance or rescue squad, privately supported, nonprofit	Offices, general
Animal boarding place	Off-street parking over 500 ft.
Appliance, repair shop	Pipeline, above ground
Art or cultural center	
Auction facility	Research Institution, noncommercial
Auditorium or convention hall	Retail establishment in a multiple family dwelling
Auto, light truck & light trailer rentals, outdoor	Retail & service establishment
Auto storage lots	Rifle or pistol range, indoor
Blacksmith	Rifle, pistol & skeet shooting range, outdoor
Boat repair & service	Roadside farm market
Boat sale, indoor	Rock or stone quarry
Bowling alley	Roofing contractor
Bus terminal	
Cable communication system	Sand, gravel or clay pit
Campground	Sanitarium
Car wash	Sawmill
Electric power transmission & distribution lines	Secondary agricultural processing, not otherwise specified
Family burial site	Stock yard
Farm machinery: sale, storage or service	Swimming pool, commercial
Farm tenant mobile home	Theater, indoor
Fertilizer mixing plant	Theater, legitimate, (indoor outdoor)
Fire station, publicly supported	Tire, battery, & accessory store
Fraternity & sorority house	Trade, artistic or technical school
Funeral parlor or undertaking establishment	
Furniture or upholstery repair shop	Winery
Golf driving range	
Grain elevator	

Source: Board of Appeals card file.

APPENDIX D

Recommended Job Responsibilities and Minimum Qualifications for New Position of Executive Secretary to the BOA

The Executive Secretary's job responsibilities should include:

- Managing the BOA office, which includes responsibilities for hiring and supervising the BOA office staff (Administrative Assistant I, Office Services Manager, Principal Administrative Aide, Public Administration Intern) and overseeing all office administration functions; this responsibility should include redesigning office functions to take full advantage of available technology;
- Reviewing all appeals filed with the BOA and preparing weekly briefings for BOA members on major issues to be addressed in cases scheduled for hearing; upon request, preparing questions for use by BOA members during public hearings;
- Researching issues for BOA members and, working under BOA members' directions, drafting BOA opinions for final BOA approval;
- Working with the BOA Chair to manage the BOA's workload; this includes establishing a case management system to monitor the backlog of cases and statutory deadlines, setting agendas and preparing packets for BOA hearings and executive sessions;
- Acting as liaison for the BOA with the Council and other County departments and agencies; this includes representing the BOA on appropriate committees and task forces;
- Preparing, executing, and monitoring the BOA's annual budget;
- Responding to requests of the public and County officials for information on actions and decisions taken by the BOA;
- Preparing responses for the BOA Chair's signature on routine and non-routine correspondence;
- Attending all BOA hearings and executive sessions;
- Organizing orientation sessions for new BOA members, and developing staff training to include knowledge of the zoning ordinance, how/when to refer public inquiries, and working with the public.

Minimum qualifications for the Executive Secretary's position should include:

- Ability to accomplish tasks with minimum supervision and general direction;

Appendix D - contd.

- Considerable knowledge of the technology of management and the principles and techniques of planning, formulating, analyzing, and implementing administrative and managerial policies;
- Proven ability to supervise staff;
- Thorough knowledge of the principles and practices of preparing and controlling operating and capital budgets;
- Considerable knowledge of County law and procedures, especially those related to the zoning ordinance and land use process in Montgomery County;
- Ability to communicate effectively both orally and in writing;
- Ability to represent the BOA's on actions and decisions taken by the BOA;
- Ability to perform responsible administrative assignments of a difficult nature and to exercise sound judgement in the performance of such duties;
- Ability to work tactfully, equitably, and effectively with others, with ability to establish and maintain effective working relationships with government officials and community groups;
- Knowledge of automation technology, especially as it relates to office procedures and data analysis;
- Ability to evaluate and analyze data, and to develop constructive recommendations for change when appropriate.

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