



Montgomery County Government

A FOLLOW-UP REPORT ON THE MONTGOMERY COUNTY BOARD OF APPEALS

	<u>Page</u>
EXECUTIVE SUMMARY	1
I. AUTHORITY, SCOPE, AND METHODOLOGY	2
II. UPDATE OF BOARD OF APPEALS (BOA) DATA	2
A. Overview	2
B. BOA's Budget.	3
C. Workload.	4
D. Length of Processing Time	6
E. Additional Updates of Data on BOA Practices	7
III. STATUS OF MAJOR RECOMMENDATIONS FROM OLO REPORT NO. 87-3	9
A. Recommendations Already Implemented	10
B. Recommendations in the Process of Being Implemented	12
C. Status of Progress on Other Recommendations	15
IV. SUMMARY OF FOLLOW-UP REPORT FINDINGS	17
V. RECOMMENDATIONS	19
VI. BOARD OF APPEALS CHAIR'S COMMENTS ON DRAFT REPORT	20

EXHIBIT A Excerpt from OLO Report No. 87-3,
Chapter VII. Recommendations

EXHIBIT B Class Specification for Executive Secretary
to the Board of Appeals



EXECUTIVE SUMMARY

This report is a follow-up to OLO Report No. 87-3, A Description and Evaluation of the Montgomery County Board of Appeals (BOA), approved by the County Council for public release in December 1987. It includes updated information on the BOA's budget, workload, processing time, and selected office practices, a progress report on the major recommendations for action contained in OLO's 1987 evaluation, and several new recommendations offered in light of current data. A review of recent BOA records indicated that:

- The upward trend in the BOA's caseload continued during 1987 and 1988, due largely to continuing increases in the number of variance petitions;
- During 1988, in comparison to previous years, the average time it took the BOA to process applications for special exceptions and administrative appeals decreased, and a higher percentage of decisions were rendered within the legally required time periods; and
- The BOA's revenues have not kept pace with recent increases in the BOA's operating costs, but increases in the BOA's filing fees have been recommended by the BOA and will be considered by the Council during 1989.

The report also finds that significant progress was made on implementing a large percentage of the recommendations offered in OLO's initial evaluation of the BOA. Many of the changes can be attributed to the appointment of a new BOA Chair in late 1987, and the budget and staff increases approved by the Council during the Spring of 1988. Specifically, during 1988:

- A new senior staff position (Executive Secretary to the BOA) was created and filled;
- An expedited process for handling uncontested cases was implemented;
- The BOA's routine hearing day was changed from Thursday to Wednesday; and
- The BOA Chair assumed greater responsibility for overseeing the BOA staff and expediting the work of the BOA.

During the past year, progress was also made towards implementing additional recommended changes including: a review of the BOA's Rules of Procedure; the automation of the BOA's routine office operations; improvements to the BOA's office facilities; and quarterly reports from the BOA to the Council.

The report recommends that:

- The BOA should continue its efforts to improve the efficiency of BOA operations;
- The issue of how to best provide the BOA with adequate legal support should be discussed with the BOA and County Attorney during upcoming Council worksessions on the FY90 operating budget; and
- The staffing needs of the BOA office should be re-evaluated during the fourth quarter of 1989.



I. AUTHORITY, SCOPE, AND METHODOLOGY

A. Authority

Council Resolution No. 11-738, Subject CY 1988 Work Program of the Office of Legislative Oversight (OLO), adopted March 29, 1988.

B. Scope and Organization of Report

This report is a follow-up to OLO Report No. 87-3, A Description and Evaluation of the Montgomery County Board of Appeals (BOA), approved by the Council for public release in December 1987. It is organized as follows:

- Chapter II provides updated information on the BOA's budget, workload, processing time, and selected office practices;
- Chapter III reviews the status of the major recommendations for action contained in OLO's original evaluation;
- Chapter IV summarizes OLO's findings;
- Chapter V contains OLO's recommendations; and
- Chapter VI contains written comments received on the draft report.

C. Methodology

This project was conducted during December 1988 and January 1989 by Karen Orlansky, OLO Program Evaluator, with assistance from Johanna Ettl and Catherine Hamm, Public Administration Interns. It involved document and file reviews, interviews, and observations. OLO received full cooperation from all parties.

II. UPDATE OF BOARD OF APPEALS (BOA) DATA

A. Overview

OLO Report No. 87-3 included data on the BOA's budget, workload, and length of processing time for cases filed and decided between January 1, 1979 and June 30, 1987. OLO Report No. 87-3 also included information about the number of BOA cases referred to the Office of Zoning and Administrative Hearings (OZAH), the number of BOA decisions appealed to the Circuit Court, the frequency of revenue transfers from the BOA office to the Department of Finance, and the use of overtime by the BOA staff.

For purposes of this follow-up report, similar data were collected for the subsequent 18 month period: July 1, 1987 - December 31, 1988. To facilitate the review of trends, tables in the text of this follow-up report incorporate data from 1983-1988.

B. BOA's Budget

As Table 1 shows, total program costs for the BOA continued to increase during FY87 and FY88. The projected operating budget total of \$265,000 for the current fiscal year (FY89) equals almost a doubling of BOA operating costs since FY84.

Table 1

Board of Appeals Office Program Costs and Revenues¹
FY84 - FY89
(in 000's)

	<u>FY84</u>	<u>FY85</u>	<u>FY86</u>	<u>FY87</u>	<u>FY88</u>	<u>FY89</u> (Projected)
Total Program Costs	\$135	\$148	\$160	\$175	\$204	\$265
Gross Revenues	\$145	\$140	\$213	\$225	\$206	\$215

¹ Gross revenue includes revenue collected for filing fees, sign deposits, and photocopying. Net revenue figures for the Board of Appeals would be slightly lower because a percent of the gross revenue received for sign deposits is refunded to property owners when signs are returned.

Source: FY84 - FY89 operating budgets.

A review of budget documents indicates that the recent increases in the BOA's budget have continued to be from: increases in salaries and benefits; increases in amounts spent on court reporters, transcripts, and duplicating; and continuing expenditures for employee overtime. The significant increase in the BOA's budget for FY89 was due largely to the additional funds appropriated by the Council for office automation equipment, for furniture to be purchased when the BOA's offices are relocated to larger facilities, for increases in the BOA Chair's compensation, and for hiring an Executive Secretary to the BOA. (Chapter III of this report provides additional details on these changes.)

The BOA's budget request for FY90, submitted to the Office of Management and Budget in December 1988, was for \$279,210, an amount below the BOA's budget "MARC" established by the County Executive. In addition to \$3,660 for anticipated annual increases in salaries and benefits, and \$5,000

for temporary office help, the BOA's budget submission included relatively minor increases totalling \$14,460 for a number of items including transcripts, court reporter fees, duplicating, local and non-local travel, postage, office supplies, file cabinets, and bookcases.¹

Although not a measure of BOA performance, the data indicate that from FY84 to FY88, the amount of revenue collected by the BOA came close to or exceeded the costs of operating the BOA office. In contrast, this fiscal year, (FY89), BOA operating costs are projected to exceed BOA revenues by approximately \$50,000. The data show that this year's gap between BOA revenues and expenditures is due both to increases in total program costs and a lower level of revenue collected by the BOA.

Because filing fees constitute the largest proportion of the BOA's revenue, the variation in the amount of revenue collected annually depends upon the filing fee schedule combined with the number and type of cases filed with the BOA. Given that current filing fees range from \$50 - \$5,000 (e.g., \$50 for a child or elderly day care facility; \$5,000 for an automobile filling station), a small change in the number or type of special exceptions filed will cause a significant shift in the total amount of revenue collected.

On February 1, 1989, the BOA submitted its recommendations to the County Council for raising the BOA's filing fees, which have not been increased since 1981. The Council is expected to hold a public hearing on the proposed increases and take final action on a new filing fee schedule in the coming months.

C. Workload

1. Volume of Cases Filed. The data indicate that the upward trend in the BOA's workload continued during 1987 and 1988. Specifically, as shown in Table 2 (page 5):

- The total number of variances, special exceptions, and administrative appeals filed with the BOA increased ten percent from 1986 to 1987, and another 21 percent from 1987 to 1988. The 507 total cases filed with the BOA during 1988 represents a 43 percent increase over the 354 cases filed five years ago.

- Growth in the BOA's total caseload during the past two years is due largely to continuing increases in the number of variance petitions (325 variances were filed during 1988 compared to 213 variances in 1986). Variance requests have continued to outweigh any other type of petition filed with the BOA, increasing from approximately half to more than 60 percent of the BOA's caseload during the past two years.

¹ The Executive's Recommended FY90 Budget and Public Services Program is expected to recommend a total of \$265,150 for the BOA in FY90. The \$14,060 difference between the funding level requested by the BOA and that expected to be recommended by the Executive is due to the Executive's denial of the \$5,000 in funds for temporary office assistance, and slightly lower funding increases for a number of the miscellaneous items including office supplies, transcripts, court reporters, and duplicating.

• The total number of special exception petitions filed during 1987 and 1988 remained at approximately the same level as it has since 1985. However, because of the continuing increases in the number of variances and administrative appeals filed, special exception petitions, which had constituted approximately one-third of the BOA's workload from 1979-1986 declined to approximately one-fourth of the BOA's caseload during the past two years. In addition, the relatively large number of special exceptions for accessory apartments filed annually since 1984 is expected to level off in future years.

Table 2
Board of Appeals - Cases Filed
Special Exceptions, Variances and Administrative Appeals
1984 - 1988

<u>Type of Case Filed</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Special Exception	193 ^a	145 ^b	132 ^c	120 ^d	135 ^e
Variance	134	165	213	257	325
Administrative Appeal	27 ^f	44 ^g	34	41	47
Total:	354	354	379	418	507

-
- a Includes 137 accessory apartment cases.
 - b Includes 101 accessory apartment cases.
 - c Includes 36 accessory apartment cases.
 - d Includes 40 accessory apartment cases.
 - e Includes 34 accessory apartment cases.
 - f Includes 15 rent supplement appeals.
 - g Includes 27 taxicab license appeals.

Source: Board of Appeals card files.

2. Number of Miscellaneous Hearings. As outlined in Table 3 (page 6), the total number of miscellaneous hearings (show cause hearings, special exception modification hearings, review hearings, and remand hearings) held by the BOA during 1988 was significantly higher than it had been in recent years. Specifically, during 1988, the BOA held 72 miscellaneous hearings, a number almost double the 37 miscellaneous hearings held during 1986, and almost quadruple the 17 hearings held during 1984.

The increase in the total number of miscellaneous hearings comes from a larger number of review hearings and a larger number of special exception modification hearings held by the BOA. It appears that these particular increases are due to a greater number of inspections by DEP's zoning enforcement staff, both in response to complaints and as part of a more rigorous routine inspection program.

Table 3

Number of Miscellaneous Board of Appeals Hearings
1984 - 1988

<u>Type of Hearing</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Show Cause	7	33	20	30	28
Modification to a Special Exception	8	10	7	12	23
Review	2	6	5	5	21
Remand	<u>0</u>	<u>0</u>	<u>5</u>	<u>0</u>	<u>0</u>
Total	17	49	37	47	72

Source: Board of Appeals monthly agendas, quarterly reports and minutes.

D. Length of Processing Time

OLO Report No. 87-3 reviewed data on the length of BOA processing time for cases filed between January 1, 1979 and June 30, 1987. BOA processing time was measured as the intervals of time between filing an application, public hearing, and final BOA action.

In order to examine whether there has been any notable improvement in the BOA's record of meeting legally mandated time requirements for notice, public hearing, and decision-making, for purposes of this follow-up report, processing time data were examined separately and compared for cases filed during each of the three most recent six-month periods: July 1-December 31, 1987; January 1-June 30, 1988; and July 1-December 31, 1988.

Overall, the data indicate that during 1988, the average (mean and median) total processing times for special exceptions and administrative appeals decreased, average times between application and hearing have come closer to the minimum requirements, and a higher percentage of decisions were issued within the legally required time periods:

- Special Exceptions. Total average processing time (between application and final BOA decision) for special exceptions decreased from approximately seven months for cases filed during 1987 to approximately five months for cases filed during 1988. A reduction was evident both in the average time interval between application and hearing, and in the average time interval between hearing and decision. Of particular interest is that, during 1988, the BOA was able to render final decisions for over 80 percent of all special exception cases within 30 days of the public hearing. This record for 1988 stands in contrast to recent years during which more than half of the BOA's special exceptions took significantly longer than the required 30 days between hearing and decision.

- Administrative Appeals. Total average processing time for administrative appeals also evidenced a downward trend during 1988. While it had taken approximately six months between filing and decision for administrative appeals filed during 1987, it took an average of only four and one-half months between filing and decision for administrative appeal cases filed during the first half of 1988.

- Variations. Total average processing time for variations showed little change during 1988. The average time period between filing and public hearing continued to be between five and six weeks (the minimum legally required notice time period for variations is 30 days), and it continued to take an average of approximately two weeks between the BOA's public hearing on a variation and the mailing of the BOA's formal opinion. However, it is important to note that since early 1988, the BOA has been voting on uncontested variations in public session directly after the close of the public hearing record. Although this change in procedure is not reflected in the official processing time data, the change has had the practical effect of letting petitioners know the outcome of their variation requests at an earlier time.

It appears that a number of factors contributed to the more timely processing of the BOA's workload during the past year. In addition to the fact that the BOA met 61 times during 1988 (an increase over the 56 BOA meetings held during 1987), the BOA Chair appointed in late 1987, has made a concerted effort to use BOA time more efficiently, to expedite the setting of hearing dates when possible, and to enforce deadlines for BOA opinion writing. According to the BOA Chair, the cooperation and hard work of the BOA office staff during the past year has also helped to make the more rigorous schedules established for the BOA result in more timely processing of BOA cases.

E. Additional Updates of Data on BOA Practices

1. Volume of Referrals to the Office of Zoning and Administrative Hearings (OZAH). At the time data were compiled for OLO Report No. 87-3, the BOA had recently begun referring an increasing number of cases to OZAH for hearing and recommendation. As shown in Table 4 (page 8), however, the relatively large number of referrals from the BOA to OZAH during 1987 did not represent the beginning of a permanent change in BOA practice. Instead, the jump in referrals to the Hearing Examiner during 1987 appears now to have been a strategy to help alleviate a short term workload problem presented by a large number of pending special exception (i.e., accessory apartment) cases.

During 1987, the BOA referred 96 cases to the Hearing Examiner; these 96 cases represented almost one-fourth of all cases filed with the BOA during that year; 71 (74%) of these 96 cases were special exceptions, almost all petitions for accessory apartments. In contrast, during 1988, the BOA referred only 17 cases, representing less than five percent of all cases filed, to the Hearing Examiner. The temporary increase in BOA referrals to OZAH during 1987 is discussed more fully in Chapter III of this follow-up report.

Table 4

Board of Appeals Cases Referred to the Hearing Examiner
1984 - 1988

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Special Exception	3	3	14	71	12
Variances	0	0	7	15	1
Administrative Appeals	<u>0</u>	<u>1</u>	<u>3</u>	<u>10</u>	<u>4</u>
Total	3	4	24	96	17

Source: Office of Zoning and Administrative Hearings quarterly reports.

2. Frequency of Revenue Transfers to Department of Finance. One problem noted in OLO Report No. 87-3 was that revenue collected by the BOA office was not being transferred to the Department of Finance in a timely manner. During FY87, BOA staff had transferred revenue collected (primarily checks but some cash) to the Finance Department only ten times during the fiscal year, in deposit amounts varying from \$4,000 to \$40,000. As much as three months had lapsed between the dates that money was transferred from the BOA office to the Finance Department.

A review of recent BOA records indicates only limited improvement in this area during FY88 and the first half of FY89. Although the frequency of deposits increased, the BOA office continued to transfer revenue collected on an irregular basis. Specifically, the BOA office transferred revenue 15 times during FY88 and seven times during the first half of FY89. Although this record represents an increase in the number of deposits, as much as six to eight weeks continued to lapse between deposits, and two-thirds of all revenue transfers made during the past year were in amounts exceeding \$12,000.

The BOA Chair and recently hired Executive Secretary share OLO's concern that the revenue collected by the BOA office be transferred to the Finance Department on a more regular and timely basis. A newly adopted BOA office policy combined with plans for increased automation of BOA records should improve the situation considerably during the coming six months. The new office policy requires all revenue collected by the BOA office to be deposited with the Finance Department on a weekly basis, or more frequently if an unusually large sum of money is received between the regularly scheduled days for transmitting revenue. The planned automation of the BOA's routine record keeping is expected to enable the BOA staff to prepare more efficiently the paperwork that is required to accompany the deposit of revenue with the Department of Finance.

3. Use of Overtime. Another problem with the management of the BOA office identified in OLO Report No. 87-3 was the extensive use of overtime by the BOA staff. Payroll Department records indicated that one employee had logged 751 hours of overtime during 1985 and 679 hours of overtime during 1986. Besides the fiscal impact of this overtime (approximately \$13,000 in 1985 and \$11,000 in 1986), overtime equal to more than one-third of an entire work year evidenced an underlying workload and staffing problem.

A reduction in the use of overtime by BOA staff has only been evident within the past few months since the hiring of the BOA's Executive Secretary. A review of payroll records indicated that throughout 1987 and until December of 1988, BOA staff continued to work unusually large amounts of overtime. Specifically, during 1987, one employee logged over 700 hours in overtime with a fiscal impact of approximately \$14,000. During the first 11 months of 1988, this employee worked another 760 hours of overtime with a fiscal impact exceeding \$14,800.

New office procedures governing overtime were instituted by the BOA's Executive Secretary in December of 1988. The new operating rule is that no BOA employee is to work overtime unless it is preapproved by the Executive Secretary, and the Executive Secretary's policy is only to approve overtime hours on the days when the BOA's hearings require staff to work excess hours, or in other extraordinary circumstances.

4. Record of Appeals. As outlined in OLO Report No. 87-3, only 100 (5.3%) of the 1,884 decisions rendered by the BOA between January 1, 1979 and June 30, 1987 were appealed to the Circuit Court. Of the 100 decisions appealed to the Circuit Court, 43 were special exceptions, 43 administrative appeals, and 14 were variances. Thirteen out of the 100 BOA decisions on appeal were reversed by the Circuit Court, 46 BOA decisions were affirmed, and the remaining 31 were either withdrawn or dismissed.

A review of BOA and County Attorney records indicated that out of 583 decisions rendered by the BOA between July 1, 1987 and December 30, 1988, 27 (4.6%) were appealed to the Circuit Court: 13 special exceptions, 7 variances, and 7 administrative appeals. As of March 1, 1989, two of the 27 BOA decisions on appeal had been reversed by the Circuit Court, five BOA decisions affirmed, six dismissed, one case remanded back to the BOA, and in one case, the Circuit Court affirmed half of the BOA's decision and reversed the other. The remaining 12 BOA decisions on appeal are still pending Circuit Court action.

III. STATUS OF MAJOR RECOMMENDATIONS FROM OLO REPORT NO. 87-3

OLO Report No. 87-3 concluded that in order for the BOA to perform its statutory functions efficiently and effectively, certain changes were required to enable the BOA and its staff to better handle a workload that had significantly increased throughout the 1980's. This chapter reports what actions have been taken during the past year on the major recommendations offered in OLO Report No. 87-3 concerning changes to the law and Rules of Procedures governing the BOA, increases in the resources supporting the BOA, and improvements to other aspects of the BOA's operations. For reference, a copy of OLO's detailed recommendations is attached as Exhibit A.

This chapter is organized as follows:

Section A reports on recommendations that have been implemented;

Section B reports on recommendations that are in the process of being implemented; and

Section C reports on the status of several other recommendations.

A. Recommendations Already Implemented

1. Overview. During the past year, a number of OLO's recommendations were implemented. Specifically:

- A new senior staff position in the BOA office was created and filled;
- An expedited process for handling uncontested cases was put into practice;
- The BOA's routine hearing day was changed to reduce weekly conflicts between BOA and Planning Board meetings; and
- The BOA Chair has assumed greater responsibility for overseeing the BOA office and providing leadership to the BOA to move the work of the BOA along more expeditiously.

The details of each of these changes are discussed below.

2. New Senior BOA Staff Position Created and Filled. OLO had recommended that additional funds be appropriated to the BOA in order to hire 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.

As approved by the County Council in the Spring of 1988, the BOA's FY89 budget included funding for a new senior staff position. Based upon an initial review, the County's Office of Personnel determined that the job responsibilities of the new position were unique enough to warrant the creation of a new employee class. In June of 1988, the proposed job class of "Executive Secretary to the Board of Appeals", Grade 27, was reviewed by the Merit System Protection Board and approved by the Director of Personnel. The position was advertised in July of 1988, interviews were held by the Board of Appeals members and the Council Staff Director in September, and the position was officially filled in November of 1988.

As outlined in the official class specification for the Executive Secretary to the Board of Appeals (for copy, see Exhibit B), the duties of the BOA's new employee include:

- Managing the daily operation of the BOA office, including hiring, supervising, and training of office staff; overseeing office administration, and developing and monitoring the BOA budget;

- Attending all BOA hearings and executive sessions, and preparing weekly briefings for BOA members on the major issues to be addressed in cases scheduled for hearing;
- Drafting BOA opinions;
- Acting as liaison for the BOA with other County departments and agencies; and
- Analyzing pending zoning text amendments which pertain to BOA responsibilities, and drafting testimony for the BOA Chair to present for public hearings.

The remainder of the BOA office staff continues to be an Administrative Specialist II (Grade 21), an Office Services Manager (Grade 15), and a Principal Administrative Aide (Grade 13). During 1988, the Administrative Specialist was upgraded from a Grade 18 to a Grade 21, and the Administrative Aide, who had been a part-time employee (30-35 hours per week) became full-time.

Beginning during FY88 and continuing through December 1988, the BOA also had a Public Administrative Intern (PAI). OLO had recommended that the BOA evaluate the continued need for a PAI, and when the Council approved the hiring of a new senior staff member (the Executive Secretary), the BOA members decided they would no longer need the PAI once the Executive Secretary was hired. The BOA's FY90 budget request does not include funding for the PAI position.

3. Expedited Process for Uncontested Variances Implemented. OLO had recommended that the BOA simplify its procedures governing the processing of uncontested variances.

In early 1988, the BOA's Chair implemented a new procedure for processing uncontested variances. Instead of routinely scheduling the discussion and vote on all cases during one of the BOA's executive sessions, the BOA Chair now calls for the BOA's formal vote on uncontested variances in public session at the close of the public hearing record. In addition to enabling an applicant to know the outcome of his/her variance petition immediately, this new procedure has reduced the amount of time spent during BOA executive sessions on uncontested matters.

This change in procedure has been so well received that the BOA Chair has occasionally extended the practice of voting in public session to uncontested special exception cases. This should further free up BOA executive session time for discussion of more controversial cases.

4. BOA Hearing Day Changed to Wednesdays. OLO had recommended that the BOA change its regular meeting day from Thursday to alleviate conflict with Planning Board meetings.

Starting in October 1988, the BOA regular meeting day each week was switched from Thursday to Wednesday. Although an occasional BOA meeting is still scheduled for a Thursday (e.g., to complete a hearing or expedite a specific case), on a routine basis, there are fewer scheduling conflicts for staff, attorneys, and citizens who must appear in front of both the Planning Board and the BOA.

5. Role of BOA Chair Expanded. OLO had recommended that the BOA Chair assume greater responsibility for overseeing the BOA staff and for providing leadership to the BOA to move the work of the BOA along more expeditiously. OLO had further recommended that the Council consider amending County Code Chapter 2, Article V, County Board of Appeals, in order to clarify the role of the BOA Chair.

An expanded role for the BOA Chair was supported by the increase in pay differential between the BOA Chair and other BOA members, approved by the Council in December 1987. In 1988, the BOA Chair received \$15,015 in compensation, and each of the other BOA members received \$10,059.

Although there have been no statutory changes to clarify an expanded role for the BOA Chair, the Chair appointed in December 1987 has been substantially involved with overseeing the daily operation of the BOA office, and has been affirmatively working to expedite the routine practices of the BOA. The current BOA Chair estimates that she spends approximately 30 hours per week on BOA business; other BOA members spend an average of 15-20 hours per week on BOA business. Examples of the Chair's significant involvement with the management of the BOA and the BOA office during 1988 include:

- Working with the Office of Personnel to create and fill the BOA's Executive Secretary position;
- Working with the Department of Facilities and Services to design a new physical space for the BOA office;
- Establishing a new office routine which encourages BOA members to review case files a day or two before the public hearing;
- Requiring that weekly agendas be developed for the BOA's executive sessions; and
- Working with staff to improve the scheduling of hearings and expediting the drafting and approval of BOA opinions.

B. Recommendations in the Process of Being Implemented

1. General. During the past year, progress has been made towards implementing a number of OLO recommendations. Specifically:

- A review of the BOA's Rules of Procedure was initiated;
- Steps were taken towards automating BOA office functions;
- Improvements to the BOA's physical facilities were planned;
- The BOA began issuing quarterly reports which should form the basis for future meetings with the Council;

- Staff is working on ways to ensure the timely receipt of the Planning Commission technical staff report on a more consistent basis; and
- A review of compensation equity among all County boards, committees, and commissions was initiated.

The details of progress in each of these areas is discussed below.

2. Review of BOA Rules of Procedures Initiated. OLO had recommended a technical review and update of the BOA's basic laws and rules of procedure. In addition, OLO had recommended that a pamphlet summarizing the statutory role of the BOA be developed.

During 1988, the BOA Chair drafted proposed amendments to the BOA's Rules of Procedure. According to the BOA Chair, the proposed amendments are intended to make the rules consistent with the County Code, logically arranged, and written in a style that is more easily comprehended by the general public. The draft amendments are expected to be discussed by the entire BOA, reviewed by the Office of the County Attorney, and forwarded to the County Council for consideration during the first half of 1989.

In addition, during the coming months, the BOA Chair plans to finalize the draft of a pamphlet that summarizes the statutory role of the BOA, describes how the BOA functions, and explains how the BOA relates to other government agencies.

3. Office Functions are in the Process of Being Automated. OLO had recommended an assessment and redesign of office functions in order to take full advantage of efficiencies available through greater use of automation.

The BOA's FY89 budget, as approved by the Council, included funds to purchase additional office automation equipment: one word processing station and one personal computer with its own printer. This equipment was ordered in November 1988 and is expected to be installed during February 1989.

One of the priorities of the BOA's newly hired Executive Secretary is to move forward with the automation of many routine BOA office functions. Working with assistance from the Council's systems administrator, the Executive Secretary plans to automate the BOA's case files, correspondence control system, sign inventory, and financial records. The addition of a second work station and personal computer will also provide for a more efficient approach to the BOA's production of notices, and writing of opinions and correspondence. By the Summer of 1989, the BOA Chair and Executive Secretary also expect to use the office computer to track the BOA's workload and legally required time limits.

4. BOA's Office Facilities are being Upgraded. Based upon the conclusion that the BOA's office facilities were not adequate to meet the needs of the public, the BOA members, and the BOA staff, OLO had recommended that the BOA's office be expanded.

The BOA Chair invested a great deal of time during 1988 pursuing the goal of additional and improved physical facilities for the BOA and BOA staff. In June 1988, the Chief Administrative Officer approved plans for moving the BOA to newly renovated space on the second floor of the Stella B. Werner Council Office Building. The BOA's move was delayed beyond an initial target date of September 1988. According to the Department of Facilities and Services staff, the BOA's new facilities should be finished by the Summer of 1989.

The BOA's new space will include an improved area designed for the public's use when making general inquiries, filing applications, or reviewing BOA files, a small hearing room for use by the BOA and the Hearing Examiner (and also available for use by other groups), a conference room, and sufficient office space for BOA members, BOA staff, and BOA files.

5. Quarterly Reports to the County Council Were Initiated. OLO had recommended that the BOA should meet at least once a year with the County Council. Without violating the ex parte rules on any particular case, the major purpose of an annual meeting with the Council would be to generally discuss the legislative intent, along with any perceived problems, of the laws and procedures governing the BOA's decision-making.

The BOA expects to meet with the Council during upcoming discussions of the BOA's FY90 operating budget. In addition, during 1988, the BOA began issuing quarterly reports to the Council. These quarterly reports include information about the BOA's caseload, income, and expenditures. The BOA Chair anticipates that in future years, the BOA's quarterly reports will form the basis for an annual meeting with the Council.

6. More Timely Receipt of Technical Staff Reports is Expected. OLO Report No. 87-3 had concluded that the BOA relies upon the M-NCPPC's technical staff more than any other single source for professional and independent analysis of special exception petitions. A review of BOA records had indicated, however, that the report and recommendations to the BOA from the Planning Commission's technical staff and Planning Board were not consistently received the legally required five days before the BOA's public hearing. OLO had recommended that internal procedures be adjusted to ensure that the technical staff report and Planning Board recommendations arrive at the BOA on time.

During 1988, the County Council amended the zoning ordinance (ZTA No. 87026, effective March 31, 1988) to require that the Planning Commission's technical staff report and Planning Board recommendations be received by the BOA at least five working days before the BOA's public hearing. This was a change from the previous requirement of five calendar days before the BOA's public hearing.

A 20 percent random sample of special exceptions heard by the BOA during 1988 showed the technical staff report arriving the legally required number of days before the public hearing approximately half the time. For special exceptions where the Planning Board also submitted a recommendation, the five-day requirement (five working days since March 31, 1988) continued to be met less than half the time.

OLO's sampling of special exception cases heard by the BOA during 1988 shows little change over the record observed by OLO for special exceptions heard between 1979 and 1986. However, interviews with the BOA Chair and Planning Board staff suggest that during the most recent two month period, special attention has been paid to improving the situation. The Planning Commission staff and the Planning Board have now altered their internal procedures to expedite their review of BOA cases. As a result, the timeliness of the technical staff report and Planning Board recommendations is expected to improve during the coming year.

7. Broader Issues of Compensation Equity Among all County Boards, Committees, and Commissions is being Addressed. OLO had recommended that the Council make future decisions about the compensation level for BOA members as part of a broader review of the workload and compensation among all County boards, committees, and commissions.

During 1988, the Council's GSA Committee initiated a comprehensive review of compensation rates among the County's many boards, committees, and commissions. Council staff is still in the process of gathering and analyzing data and is expected to report back to the GSA Committee during March 1989.

C. Status of Progress on Other Recommendations

1. General. This section reports what has occurred with several other OLO recommendations. Specifically, the following sections discuss OLO's recommendations to provide additional and responsive legal assistance to the BOA; and to refer additional cases to the OZAH for hearing and recommendation.

2. Recommendation to Provide Additional and Responsive Legal Assistance to the BOA. As outlined in OLO's evaluation, the BOA needs a range of legal services. In particular, OLO had concluded that the BOA needs an attorney who is available on an as-needed basis to:

- Provide general legal advice about issues such as relevant court decisions, hearing procedures, and other statutory requirements;
- Review and assist with drafting BOA opinions;
- Provide legal advice prior to public hearings on individual cases, especially those involving complex legal issues; and
- Be available to sit with the BOA during public hearings and, when appropriate, the BOA's executive sessions.

OLO had specifically recommended that an attorney from the County Attorney's Office be assigned to meet the legal needs of the BOA, and that if necessary, the County Attorney should be appropriated additional funds to support an enhanced level of legal support for the BOA. To minimize any perceived conflict of interest, OLO also recommended that during the time an attorney from the County Attorney's Office is assigned to advise the BOA, he/she should not appear before the BOA as a presenter in administrative appeal cases.

Consistent with OLO's recommendations, there is currently an attorney from the County Attorney's office assigned to provide legal assistance to the BOA. In addition, since early 1988, the Assistant County Attorney assigned to the BOA does not appear before the BOA as a presenter in administrative appeal cases.

Although the perceived conflict of interest problem has been addressed, conversations with the BOA Chair and the County Attorney suggest that the situation today is still characterized by some of the same problems observed by OLO during 1987. The County Charter and Code continue to specify that the County Attorney is the BOA's legal advisor; and the BOA would likely benefit from additional legal advice and assistance with writing opinions. In practice, however, the BOA still is not receiving the level of legal assistance deserved. The reasons for this appear to be competing workload demands on the Office of the County Attorney, and a lack of clear communication between the BOA and the Office of the County Attorney about the BOA's desire for additional legal help.

3. Recommendation to Refer Additional Cases to Office of Zoning and Administrative Hearings (OZAH). The OLO report had recommended that one way to alleviate the BOA's workload would be for the BOA to make greater use of its statutory authority to refer cases to OZAH for hearing and recommendation. OLO had also recommended, however, that the ultimate decision of how many and which cases to refer to OZAH should remain with the BOA.

At the time data were compiled for OLO Report No. 87-3, the BOA had recently started to refer an increasing number of cases to the Hearing Examiner for hearing and recommendation, a procedure that appeared to help alleviate the BOA's workload. However, as reported earlier in this follow-up (page 7), a review of BOA and OZAH records indicated that the relatively large number of referrals during 1987 appears now to have been only a temporary strategy to alleviate a workload problem presented by a large number of pending special exception (i.e., accessory apartment) cases. During 1988, the BOA referred only 17 cases to the Hearing Examiner; all but one of these 17 cases were referred during the first six months of the year.

The decline in referrals to OZAH during 1988 began soon after the appointment of a new BOA Chair in late 1987. One of the priorities of the new BOA Chair has been to improve the ability of the BOA to process its own caseload in a timely manner without routinely relying upon the Hearing Examiner to alleviate the BOA's workload. As reviewed in Chapter II of this follow-up report, even though the volume of cases filed with the BOA has continued to increase, the average processing time for special exceptions and administrative appeals has in fact declined.

According to the BOA Chair, the BOA's current policy is for the BOA to make every effort to manage its own caseload, but occasionally to refer cases that raise particularly technical legal issues to the Hearing Examiner. In addition, the BOA Chair notes that there may come a time in the future when the BOA's ability to process its own caseload is such that consideration will be given to again referring a larger number of cases to the Hearing Examiner.

IV. SUMMARY OF FOLLOW-UP REPORT FINDINGS

A. Update of Board of Appeals Data

A review of BOA records indicated the following:

- BOA Budget. BOA budget increases since July 1987 have been primarily for increases in salaries and wages, expenditures for office automation equipment and furniture for the BOA's new facilities, and continued growth in expenditures for court reporters, transcripts, and duplicating. Although the BOA's revenues have not kept pace with recent increases in the BOA's operating costs, increases in the BOA's filing fees have been recommended by the BOA and will be considered by the Council during 1989.

- BOA Workload. The upward trend in the BOA's workload continued during 1987 and 1988. Growth in the BOA caseload is due largely to continuing increases in the number of variance petitions, which now constitute approximately 60 percent of the BOA's caseload. The total number of miscellaneous hearings held by the BOA was also significantly higher during 1988 than in previous years.

- Length of Processing Time. In comparison to previous years, during 1988, the total processing time for special exceptions and administrative appeals decreased, the average times between application and hearing have come closer to the minimum requirements, and a higher percentage of decisions were issued within the legally required time periods.

- Referrals to the OZAH. The volume of cases referred from the BOA to the Hearing Examiner for hearing and recommendation ballooned during 1987, but decreased again during 1988. According to the BOA Chair, the BOA's current policy is to make every effort to handle its own workload without routinely referring cases to the Hearing Examiner.

- Frequency of Revenue Transferred to Finance. During the past year, although the frequency of deposits increased, the BOA office continued to transfer revenue collected to the Department of Finance on an irregular basis. A newly adopted office policy that requires weekly deposits should improve the situation during the coming year.

- Use of Overtime. A reduction in the use of extensive overtime by the BOA office staff has only been evident within the past few months since the hiring of the BOA's Executive Secretary. A new office policy that requires all overtime to be preapproved by the Executive Secretary has significantly reduced the amount of overtime used by the BOA office staff.

- Record of Appeals. Twenty-seven (4.6%) of the 583 decisions rendered by the BOA between July 1, 1987 and December 31, 1988 were appealed to the Circuit Court. As a percentage of decisions appealed, this compares favorably to the 100 (5.3%) of the 1,884 decisions by the BOA appealed between January 1, 1979 - June 30, 1987. Although a large number of the 27 appeals since July 1, 1987 are still pending, as of March 1, 1989, the Circuit Court had reversed the BOA in only two and one-half cases.

B. Status of Major Recommendations From OLO Report No. 87-3

During the past year, significant progress was made on implementing a large percentage of OLO's recommendations. Many of the changes can be attributed to the appointment of a new BOA Chair in late 1987, and the budget and staff increases approved by the Council during the Spring of 1988.

The following changes implemented during the past year were consistent with OLO's recommendations:

- A new senior staff position (Executive Secretary to the BOA) was created and filled;
- An expedited process for handling uncontested cases was implemented;
- The BOA's routine hearing day was changed from Thursday to Wednesday to minimize weekly conflicts between BOA and Planning Board meetings; and
- The BOA Chair assumed greater responsibility for supervising the BOA staff and providing leadership to the BOA to move the work of the BOA along more expeditiously.

During the past year, progress was also made towards implementing the following additional recommended changes:

- A review of the BOA Rules of Procedure was initiated;
- Steps were taken towards automating the BOA's routine office functions;
- Improvements to the BOA's office facilities were started;
- The BOA started issuing quarterly reports which should provide the basis for an annual meeting with the Council;
- Staff has been working to ensure the timely receipt of the Planning Commission's technical staff reports and Planning Board recommendations on a more consistent basis; and
- A review of compensation equity among all boards, committees, and commissions was initiated.

Several OLO recommendations have not been implemented.

- OLO's recommendation to refer additional cases to the OZAH was not implemented. Instead, the BOA Chair has made a number of internal BOA changes to enable the BOA to better manage its own workload. The BOA still refers an occasional case to the Hearing Examiner, and recognizes that there may come a time when the BOA will again consider referring a larger volume of cases.

- OLO's recommendation that the BOA be provided with additional and responsive legal assistance has not been implemented. Even though an attorney from the County Attorney's office is assigned to provide legal assistance to the BOA, and since early 1988, the Senior Assistant County Attorney has no longer appeared before the BOA as a presenter, during the past year, the BOA has received little in the way of additional legal advice.

V. RECOMMENDATIONS

A. Continue Current Efforts to Improve BOA Efficiency

The BOA should continue efforts to improve the efficiency of BOA operations. While acknowledging the significant progress already made, the actual implementation of additional improvements will demand a continuation of the high level of attention focused on how to better manage the routine practices of the BOA and its staff.

In particular, continued attention during the coming year should be paid to the following projects already initiated:

- The review and revision of the BOA's Rules of Procedure;
- The automation of BOA office functions; and
- The improvements to the BOA's office facilities.

The BOA Executive Secretary should continue her concerted efforts to improve the efficiency of internal office operations, including continued attention to the management of the BOA's revenue and the use of employee overtime. In addition, the BOA staff should continue to work with the Planning Commission staff to figure out the best way to ensure the timely receipt of the Planning Commission staff's technical reports and the Planning Board's recommendations.

B. Continue Monitoring of BOA Workload and Operations

The BOA Chair, with assistance from the BOA's Executive Secretary, should continue to monitor closely the BOA's workload and office operations. Quarterly reports to the Council, initiated by the BOA Chair during 1988, should continue to keep the Council informed about:

- The number and type of cases filed with the BOA;
- The number and type of hearings held by the BOA;
- The number and type of decisions rendered by the BOA;
- The record of BOA decisions appealed to the Circuit Court;

- The number and type of BOA cases referred to the OZAH; and
- The status of the BOA's budget.

When appropriate, the data in the quarterly report should be supplemented with text highlighting any significant trends or changes in the BOA's workload. In addition, once the BOA's case files have been automated, the BOA's quarterly reports to the Council should be expanded to include information on the BOA's average processing time for variances, special exceptions, and administrative appeals.

C. Address Issue of Legal Support for the BOA During FY 90 Budget Worksessions

The BOA should re-examine its legal needs and clearly communicate these needs to the County Attorney. In turn, the County Attorney should make all efforts to meet the legal needs of the BOA.

It would also be appropriate for the Council to discuss the issue of how to best provide the BOA with adequate legal support during the Council's upcoming worksessions on the FY90 operating budget. OLO's recommendation continues to be the same as it was in 1987, which is, that an attorney from the County Attorney's Office should be available on an as-needed basis to provide the BOA with oral and written opinions, to provide legal advice to the BOA before and during public hearings, and to alert the BOA to statutory requirements that must be met. At the BOA's request, an attorney should also be available to review BOA opinions, especially in cases involving complex legal issues. If necessary, the County Attorney should be appropriated additional funds to support this enhanced level of service to the BOA.

D. Re-Evaluate Staffing Needs of BOA Office

At the time data were collected for this follow-up report, it was too soon to evaluate how the hiring of the Executive Secretary to the BOA and the deletion of the BOA's PAI position will affect the future staffing needs of the BOA. Because this is an issue that should be addressed, the Council, with input from the BOA, should re-evaluate the staffing needs of the BOA office during the fourth quarter of 1989, in time for any recommended changes to be incorporated into the BOA's FY91 budget request. By the fourth quarter of 1989, the Executive Secretary will have been with the BOA for a year, the BOA will be relocated to renovated office space, and many routine BOA operations will be automated. With these changes in place, the future staffing needs of the BOA office should be apparent.

VI. BOARD OF APPEALS COMMENTS ON DRAFT REPORT

On February 27, 1989, OLO circulated a draft of this follow-up report to the BOA Chair, the BOA Executive Secretary, the Director of the Office of Zoning and Administrative Hearings, and the Council Staff Director. All technical corrections are incorporated into this final report. The written comments received from the BOA Chair are included in their entirety starting on page 21.



Montgomery County Government

MEMORANDUM

4 March 1989

TO : Karen Orlansky, Program Evaluator,
Office of Legislative Oversight

FROM : Judith B. Heimann, Chairman *judith*
Board of Appeals

RE : Draft OLO Report No. 88-8, Follow-up Report
on Board of Appeals

Thank you very much for sending me a copy of the draft for comment.

Obviously I am very pleased with the progress you have found in improving the operation of the Board of Appeals. The slow pace of the progress is still frustrating to me, but I have great hope that our upcoming move will help to speed things up. Although I understood the reasons for the delay in our move, I was still keenly disappointed when the date kept being shifted - first from July 88 to September 88 and finally to July 89. The delay in moving had a domino effect on other improvements, because we were unable to physically accommodate more Wang stations and therefore could not begin the planned automation. It also means that the money we requested for furnishings will probably be insufficient, since prices have gone up.

When our new Executive Secretary came on Board, we were at least assigned a new conference room, which enabled us to use the old conference room as a combined office for the Executive Secretary and myself and gave us some space for a Wang station.

Concerning specific items in the report, there are just some minor points I want to bring to your attention.

II - D. Length of Processing Time

One factor which your report does not mention, but which tends to skew the statistics is the number of times a case is continued or deferred. As you know, the earliest we can schedule a special exception is 60 days after it has been filed (except under emergency circumstances). However, very frequently the petitioner, especially in big cases

County Board of Appeals

Stella B. Werner Council Office Building
100 Maryland Avenue, Rockville, Maryland 20850, 301/217-6600, TTY 217-6505



Montgomery County Government

2

such as Housing for the Elderly etc. either asks that we do not schedule it as early as 60 days, or requests that the case be continued or deferred. One such case (Holy Cross Ambulatory Care Center) was filed in July 1987 and has been continued many times at the request of the petitioner. It had lately been scheduled for January 89, then we were asked to continue it to May 89. The petitioner has now asked that the case be dismissed without prejudice, so it will not show up in the statistics anymore, but it is by no means the only such case. Then there are cases which we continue during the public hearing. We had two such cases just this week where there were problems which the petitioner might be able to work out and in order to allow for more time, we continued the cases to a date in July.

I am not happy with the length of time it takes to dispose of administrative appeals. However, that problem is caused by the Office of the County Attorney, who does not want us to schedule more than one administrative appeal per week. I would be happy to schedule a full extra day just to clear the backlog of administrative appeals - as we have done with accessory apartments - but our hands are tied.

III - C - 2. Recommendation to Provide Additional and Responsive Legal Assistance.

This remains the most troublesome aspect of my job. When I first came into office, I met with the County Attorney and with the Senior Assistant County Attorney for Land Use. At that time I asked if we could have more assistance and I also asked that we get a monthly report on Board of Appeals cases which had gone to court. Since the time I made that request we have received perhaps three or four reports altogether, and they were not comprehensive.

Although an assistant county attorney is supposed to be available to the Board in reality we never see the person, nor do we get timely responses to inquiries. I understand that this is due to the workload in the County Attorney's office, but that explanation does nothing to help us.

I was also extremely troubled by a conversation with the Senior Assistant County Attorney for Land Use, when she explained to me that whether they defend us in court or not is discretionary with their office. She stated that our

County Board of Appeals

Stella B. Werner Council Office Building
100 Maryland Avenue, Rockville, Maryland 20850, 301/217-6600, TTY 217-6505



Montgomery County Government

3

opinions should stand on their own "... and in any case usually the citizens and the petitioner are represented by an attorney." The trouble with that is that our opinions are not written by an attorney and no legal research is done to present our case, and it does not seem equitable to me that a county agency relies on the attorney representing an applicant or citizens to defend it.

It continues to be my opinion that we should have an independent attorney who would sit with us when we hear special exceptions and administrative appeals and who is available another day or half-day to write the more difficult opinions. Having a Board member fill this role is not at all satisfactory. I cannot expect the Board member to give us unbiased, objective advice, since the member is going to vote on a case. Ideally I would also like to have that attorney available to defend us in court.

Excerpt FromOLO Report No. 87-3, A Description and Evaluation of the
Montgomery County Board of Appeals**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: Undertake 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: Provide Additional Resources for BOA Office

1. Create New Senior Professional Staff Position. 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 BOA's senior administrator. It is quite possible that the new position being recommended will not require the creation of a new class.

The hiring process for the BOA's senior administrator 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 providing direction to the BOA's senior administrator on all programmatic functions should be delegated to the BOA Chair (see Recommendation C). 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 BOA's senior administrator job responsibilities and minimum qualifications for the 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 C: Expand Role of BOA Chair

1. 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. This expanded role for the BOA Chair is supported by the recent increase in pay differential between the BOA Chair and other BOA members.

2. To reinforce and clarify the expanded role, Chapter 2, Article V, County Board of Appeals, MCC, 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 (e.g., 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 D: Provide BOA Members with Professional Staff Assistance for the Purpose of Drafting Opinions

1. To allow BOA members to focus more time and effort on the hearing and decision process, drafting of BOA opinions is a function that BOA members should be able to delegate largely to staff. Of course, the availability of staff assistance does not preclude BOA members from continuing to draft selected opinions themselves.

2. Working under the direction of BOA members, providing staff assistance for drafting BOA opinions can be shared among the BOA's senior administrator (see Recommendation B), the County Attorney assigned to assist the BOA (see Recommendation F), and, if necessary, continued employment of a Public Administration Intern (see Recommendation B).

3. The staff assigned to draft 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, in appropriate cases where legal counsel is already present, continue to request parties to submit draft findings of fact and conclusions of law. Requesting parties to submit such drafts is an accepted practice in some courtrooms and is already allowed under the BOA's current Rules of Procedure (Rule 8.3).

Recommendation E: 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:

- 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;

- 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

- 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 Special Exception Uses Should be Delegated to OZAH for Hearing and Decision. Section 59-G-1.12, MCC, 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 special exception uses (and/or types of administrative appeals) are appropriate to delegate to the OZAH for hearing and decision, with appeal to the BOA.

Recommendation F: Provide Additional and Responsive 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 not 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, as needed, sit with the BOA during the BOA's public hearings, and as appropriate, also attend 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 G: Improve Technical Assistance

1. Notice of all BOA filings should be sent, as required by law, (Section 59-A-4.46, MCC) 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. Section 59-G-3.1, MCC, 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 H: 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.

3. The BOA should adopt guidelines for determining when an expedited hearing date is appropriate. One category of cases to consider routinely for expedited hearings are those administrative appeals and special exception petitions generated by a warning notice of violation issued by DEP inspectors charging an illegal land use. Doing so may address the public's concern with the County government's general practice of tolerating an allegedly illegal land use pending a BOA decision.

Recommendation I: 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 should be to generally discuss the legislative intent, along with any perceived problems, of the laws and procedures governing the BOA's decision-making.

Recommendation J: Take Action to Address Larger Issue of Board Member Compensation

Recommending the appropriate level of 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.

MONTGOMERY COUNTY GOVERNMENT
ROCKVILLE, MARYLANDCode No. 0084
Grade 27

CLASS SPECIFICATION

EXECUTIVE SECRETARY TO THE
BOARD OF APPEALSDEFINITION OF CLASS:

This is supervisory administrative work providing staff support to the County Board of Appeals. Contacts on a recurring basis include the County Council members, various department and agency directors, County and/or private attorneys, various business owners or company officers, leaders of civic organizations, and the general public for the purpose of representing the Board on matters on which there is disagreement between the parties involved.

An employee in this class prepares draft reports of Board opinions, may prepare questions and recommendations for Board members' consideration during hearings, drafts correspondence for Board members' signature, coordinates Board caseload and briefs members on major issues to be addressed in cases. Preparation of recommendations and draft opinions for the Board and review of cases requires substantial research and analysis of issues. The Board members, however, are ultimately responsible for case materials prepared and decisions rendered. The employee also is independently responsible for planning and evaluating the effectiveness of the staff support to the Board, implementing automation of Board case record-keeping, budgeting and allocating resources, and deciding on personnel matters for Board staff. The employee's performance is evaluated in terms of the effectiveness of the operation of the Board office, and the quality of analysis and preparation of reports and other materials for Board members. Guidelines consist of zoning and land-use legislation, County Government Department regulations, and established policies and procedures. The employee is required to exercise considerable judgment in interpreting the guidelines, in managing the Board office, and providing analysis of issues and other materials to be reviewed and considered by Board members and others. The complexity of the work is characterized by varied duties in the administrative area and in the required depth of research necessary to analyze issues and to prepare reports and correspondence for Board members. The employee makes recommendations which, if accepted, may have an impact on some County programs, local businesses, and private citizens. The work is primarily sedentary, is performed in a typical office setting, and presents no significant hazards to the employee.

EXAMPLES OF DUTIES: (Illustrative only)

Reviews all appeals filed with the Board, prepares weekly briefings for Board members on the major issues to be addressed in cases scheduled for hearing, and prepares draft reports of Board opinions. Upon request, prepares questions for use by Board members during public hearings.

Manages the daily operation of the Board of Appeals office, including hiring, supervising, and training office staff; overseeing office administration; coordinating automation of office case records; and developing, executing, and monitoring the budget for the Board.

Attends all Board hearings, executive sessions, and meetings, which may be conducted outside of normal business hours.

Acts as a liaison for the Board with the County Council and other County departments and agencies; including representing the Board on appropriate committees and task forces.

Ensures that all statutory deadlines are met and that all affected parties are aware of applicable deadlines.

Analyzes pending zoning text amendments which pertain to Board responsibilities, briefs Board members and prepares testimony for public hearings.

Identifies problem areas, drafts changes to the County Zoning Ordinance as it relates to the Board, and provides recommendations to the Board for submission to the County Council.

Evaluates office policies and procedures and has final authority for implementing improvements in the operation of the Board's office.

Performs related duties as required.

MINIMUM QUALIFICATIONS:

Experience: Thorough (5 years) professional-level experience in business or public administration, two (2) years of which must have included management/supervisory responsibilities.

Education: Graduation from an accredited college or university with a Bachelor's Degree in Business, Public Administration, or a related field.

Equivalency: An equivalent combination of education and experience may be substituted.

Knowledge, Skills, and Abilities:

Thorough knowledge of zoning and land use regulations and policies.

Considerable knowledge of the principles and practices of management, including preparing and monitoring operating and capital budgets.

Knowledge of automation technology as it relates to managing office files and data analysis.

Ability to represent the Board of Appeals (BOA) on actions and decisions made by the Board.

Ability to conduct in-depth analysis of issues before the Board and to prepare comprehensive reports of Board opinions.

Ability to establish and maintain effective working relationships with BOA office staff, Board members, Council members, department heads, division chiefs, professional personnel in other offices and agencies, and the general public.

Ability to manage an office and supervise staff.

Ability to communicate effectively, both orally and in writing.

Ability to accomplish administrative tasks with a minimum of general direction or supervision.

LICENSE:

Possession of a valid motor vehicle operator's license when required for job-related duties.

PROBATIONARY PERIOD:

Individuals appointed or promoted to this class will be required to serve a probationary period of six months, during which time performance will be carefully evaluated. Continuation in this class will be contingent upon successful completion of the probationary period.

MEDICAL GROUP: III

Class Established: June, 1988

1539E