

Bill No. 37-01
Concerning: Board of Appeals -
Technical Corrections
Revised: 11-27-01 Draft No. 2
Introduced: November 6, 2001
Enacted: November 27, 2001
Executive: December 6, 2001
Effective: March 7, 2002
Sunset Date: None
Ch. 30, Laws of Mont. Co. 2001

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President

AN ACT to correct technical and codification errors in, and make stylistic and conforming amendments to, County law regarding the jurisdiction and procedures of the Board of Appeals.

By amending

Montgomery County Code
Chapter 2, Administration
Sections 2-112, 2-113, 2-113A, and 2-140

Chapter 8, Buildings
Section 8-23

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 2-112, 2-113, 2-113A, 2-140, and 8-23 are amended as**
2 **follows:**

3 **2-112. [Duties and powers.] Jurisdiction.**

4 **[(a) The County Board of Appeals has the following duties and powers:**

- 5 (1) **Functions of board of zoning appeals. The board shall have and**
6 **exercise the functions and powers of the board of zoning appeals**
7 **of the regional district in Montgomery County as such functions**
8 **and powers are prescribed in the Maryland-Washington Regional**
9 **District Act, enacted by chapter 992 of the Laws of Maryland,**
10 **1943, and any amendments thereto, and all references in the**
11 **regional district act and zoning ordinance to the Board of Zoning**
12 **Appeals shall be construed to refer to the Board created by this**
13 **Article. Upon the effective date of this Article, the Board of**
14 **Zoning Appeals shall cease to exist.**
- 15 (2) **Petitions for special exceptions. The Board shall decide all**
16 **petitions for special exceptions, except as otherwise provided in**
17 **Chapter 59 of this Code.**
- 18 (3) **Hearing under building code. The Board hears and decides all**
19 **appeals taken from a decision made by the Department of**
20 **Permitting Services under the County building code. An appeal**
21 **must be filed with the Board within 30 days after the decision of**
22 **the Department of Permitting Services.**
- 23 (4) **Appeals concerning licenses for hospitals, sanitariums, nursing**
24 **homes and care homes. The Board shall hear and decide all**
25 **appeals taken pursuant to Section 25- 23, and all references**
26 **therein to the Council shall be construed to refer to the Board.**

- 27 (5) Appeals concerning licenses for private educational institutions.
28 The Board shall hear and decide all appeals taken pursuant to
29 Section 44-25, and all references therein to the Council shall be
30 construed to refer to the Board.
- 31 (6) Appeals from orders directing the removal of garbage, ashes,
32 rubbish and weeds. The Board shall hear and decide all appeals
33 taken pursuant to Section 48- 28, and all references therein to the
34 Council shall be construed to refer to the Board.
- 35 (7) Appeals from orders directing removal of diseased trees. The
36 Board shall hear and decide all appeals taken pursuant to Sections
37 18-4 to 18-10, and all references therein to the Council shall be
38 construed to refer to the Board.
- 39 (8) Appeals from orders directing removal of obstructions to vision
40 along highways. The Board shall hear and decide all appeals
41 taken pursuant to Section 49-16, and all references therein to the
42 Council shall be construed to refer to the Board.
- 43 (9) Appeals from orders concerning restaurant permits. The Board
44 shall hear and decide all appeals taken pursuant to Section 15-18
45 and all references therein to the Council shall be construed to
46 refer to the Board.
- 47 (10) Appeals concerning individual water supply and sewage disposal
48 systems. The Board shall hear and decide all appeals taken under
49 Chapter 27A.
- 50 (11) Appeals from orders regarding uninhabitable or dangerous
51 buildings. The Board shall hear and decide all appeals taken
52 under Chapter 55 of this Code, and all references therein to the
53 Council shall be construed to refer to the Board.

- 54 (12) Appeals concerning licenses for riding schools and stables. The
55 Board shall hear and decide all appeals taken under the ordinance
56 licensing and regulating riding schools and stables, the same
57 being Ordinance No. 2-75, adopted by the Council on December
58 23, 1952; and all references therein to the Council shall be
59 construed to refer to the Board.
- 60 (13) Appeals concerning licenses for child care homes. The Board
61 shall hear and decide all appeals taken under the ordinance
62 licensing and regulating child care homes, the same being
63 Ordinance No. 2-132, adopted by the Council on January 19,
64 1954; and all references therein to the Council shall be construed
65 to refer to the Board.
- 66 (14) Appeals concerning licenses for places of amusement and
67 amusement enterprises. The Board shall hear and decide all
68 appeals taken under any ordinances licensing and regulating
69 places of amusement and amusement enterprises, and all
70 references in such ordinances to the County Council shall be
71 construed to refer to the Board.
- 72 (15) Appeals concerning the hotel license law. The Board shall hear
73 and decide all appeals taken under the hotel licensing law, being
74 Ordinance No. 3-41, adopted August 16, 1955; and all references
75 therein to the County Council as an appeal body shall be
76 construed to refer to the Board.
- 77 (16) Appeals concerning the plumbers and gas fitters license law and
78 the plumbing and gas fitting code. The Board shall hear and
79 decide all appeals taken under the plumbers and gas fitters
80 licensing law and the plumbing and gas fitting code, and all

81 references therein to the County Council as an appeal body shall
82 be construed to refer to the Board.

83 (17) Appeals concerning the electrical contractors license law. The
84 Board shall hear and decide all appeals taken under the electrical
85 contractors licensing law and all references therein to the County
86 Council as an appeal body shall be construed to refer to the
87 Board.

88 (18) Appeals concerning rent supplement and assistance program law.
89 The Board shall hear and decide all appeals pursuant to Chapter
90 41A of this Code. No filing fee shall be required for appeals
91 under this subsection. Appellants under this subsection shall be
92 granted emergency hearings pursuant to Section 2A-9 of this
93 Code.

94 (19) Appeals governing mobile home parks. The Board must hear and
95 decide all appeals taken under Chapter 29, Article VII, "Property
96 Standards for Mobile Home Parks."

97 (20) Appeals concerning agricultural land preservation. The Board
98 hears and decides all appeals taken under Section 2B-4.

99 (21) Appeals concerning air quality control. The Board hears and
100 decides all appeals taken under Section 3-16.

101 (22) Appeals from orders concerning fire safety. The Board hears and
102 decides all appeals taken under Section 22-21.

103 (23) Appeals concerning deficiency correction orders issued to group
104 residential facilities. The Board hears and decides all appeals
105 taken under Section 23A-9(c)(2).

106 (24) Appeals concerning historic area work permits. The Board hears
107 and decides all appeals taken under Section 24A-7.

- 108 (25) Appeals concerning building or occupancy permits related to
109 moderately-priced dwelling units. The Board hears and decides
110 all appeals taken under Section 25A-11 regarding the denial,
111 suspension, or revocation of a building or occupancy permit to a
112 moderately-priced dwelling unit.
- 113 (26) Appeals concerning massage establishment licenses, and
114 registration of massage practitioners and technicians. The Board
115 hears and decides all appeals taken under Section 24-11.
- 116 (27) Appeals concerning rat control. The Board hears and decides all
117 appeals taken under Section 39-4.
- 118 (28) Appeals concerning commercial campgrounds. The Board hears
119 and decides all appeals taken under Section 41-16.
- 120 (29) Appeals concerning inspection of slaughterhouses. The Board
121 hears and decides all appeals taken under Section 46-6.
- 122 (30) Appeals concerning vendor's licenses. The Board hears and
123 decides all appeals taken under Section 47-7.
- 124 (31) Appeals concerning permits for grading and construction of
125 roads, sidewalks, and curbs. The Board hears and decides all
126 appeals taken under Section 49-39A.
- 127 (32) Appeals concerning swimming pool licenses, permits, and
128 registrations. The Board hears and decides all appeals taken
129 under Section 51-13.
- 130 (33) Appeals concerning tanning facilities. The Board hears and
131 decides all appeals taken under Section 51A-10.
- 132 (34) Appeals concerning denial, revocation, or suspension of a license
133 for a transient lodging facility. The Board hears and decides all
134 appeals taken under Section 54-27.

135 (35) Appeals from orders involving weed removal. The Board hears
 136 and decides all appeals taken under Section 58-6.

137 (36) Appeals concerning violation of housing and building
 138 maintenance standards. The Board hears and decides all appeals
 139 taken under Section 26-14.

140 (37) Other appeals. The Board hears and decides other appeals to the
 141 extent authorized by law.]

142 [(b) The Board may, by vote of 3 members, refer any matter pending before
 143 it, to be heard by a hearing examiner in the Office of Zoning and
 144 Administrative Hearings under the rules of procedure of that Office.
 145 The hearing examiner must submit a written report and
 146 recommendation to the Board for the Board's final decision.]

147 (a) The County Board of Appeals must exercise all functions of a Board of
 148 Zoning Appeals. Any reference to a Board of Zoning Appeals for the
 149 County in state or County law means the County Board of Appeals.

150 (b) The Board must hear and decide each application for a special
 151 exception, unless Chapter 59 directs otherwise.

152 (c) The Board has the following appellate jurisdiction.

<u>The board must hear and decide each appeal taken under:</u>	<u>Those appeals involve:</u>
<u>Section 2B-4</u>	<u>Agricultural land preservation</u>
<u>Section 3-16</u>	<u>Air quality control</u>
<u>Section 4-13</u>	<u>Licenses for places of amusement</u>
<u>Section 8-23</u>	<u>County building code</u>
<u>Section 15-18</u>	<u>Food service facility licenses</u>

<u>Section 17-28</u>	<u>Electricians and electrical contractors licenses</u>
<u>Section 18-7</u>	<u>Removal of diseased trees</u>
<u>Section 22-21</u>	<u>Fire safety orders</u>
<u>Section 23A-11</u>	<u>Group home licenses and deficiency orders</u>
<u>Section 24A-7</u>	<u>Historic area work permits</u>
<u>Section 25-23</u>	<u>Licenses for hospitals, sanitariums, nursing homes, and care homes</u>
<u>Section 26-14</u>	<u>Housing and building maintenance standards</u>
<u>Chapter 27A</u>	<u>Individual water supply and sewage disposal systems</u>
<u>Section 29-77</u>	<u>Mobile home parks</u>
<u>Section 39-4</u>	<u>Rat control</u>
<u>Section 41-16</u>	<u>Commercial campgrounds</u>
<u>Section 44-25</u>	<u>Licenses for private educational institutions</u>
<u>Section 46-6</u>	<u>Slaughterhouses</u>
<u>Section 47-7</u>	<u>Vendors' licenses</u>
<u>Section 48-28</u>	<u>Removal of solid waste and weeds</u>
<u>Section 49-16</u>	<u>Removal of obstructions to vision along highways</u>
<u>Section 49-39A</u>	<u>Grading and construction of roads, sidewalks, and curbs</u>
<u>Section 51-13</u>	<u>Swimming pool licenses, permits, and registration</u>
<u>Section 51A-10</u>	<u>Tanning facilities</u>
<u>Section 54-27</u>	<u>Transient lodging facilities</u>
<u>Section 55-2</u>	<u>Dangerous buildings</u>
<u>Section 58-6</u>	<u>Weed removal</u>

Chapter 59Special exceptions decided by Hearing Examiner

153 (d) The Board must hear and decide any other appeal authorized by law.

154 (e) Any reference to the County Council as hearing an appeal in any
 155 chapter or section of the County Code listed in subsection (c) means
 156 the Board of Appeals.

157 **2-113. Procedures.**

158 (a) Subject to the approval of the Council, the Board may adopt rules of
 159 procedure to govern its proceedings. [The Board's rules of procedure
 160 do not apply to hearings held by the Hearing Examiner.] The Board's
 161 rules may govern filing fees, the conduct of meetings and hearings,
 162 and other procedures necessary to hear and decide cases. This Article
 163 and other laws, ordinances, rules, and regulations under which the
 164 Board exercises authority control in [case of] any conflict with any
 165 rule adopted by the Board], except as otherwise provided in
 166 subsection 2-112(b)].

167 * * *

168 **2-113A. [Decisions on recommendation of] Referrals to hearing examiner.**

169 [(a) Any application, petition or order of appeal of those matters set forth
 170 in section 2-140(2)(c) of article X of this chapter or in chapter 59 of
 171 this Code, wherein a hearing is provided before the hearing examiner
 172 who shall thereafter submit a written report and recommendation to
 173 the county board of appeals for decisions on such matters, shall be
 174 decided on the basis of the evidence of record; provided, that any
 175 application, petition or appeal heard by a hearing examiner may be
 176 decided solely on the basis of the hearing examiner's report and
 177 recommendation.]

- 178 (a) The Board may, by vote of 3 members, refer any matter pending
 179 before it to be heard by a hearing examiner in the Office of Zoning
 180 and Administrative Hearings. The Office must conduct the hearing
 181 under the Office's rules of procedure or, if the Office's rules do not
 182 apply to that type of hearing, the Board's rules of procedure. The
 183 hearing examiner must submit a written report and recommendation to
 184 the Board.
- 185 (b) Within [ten (10)] 10 days after transmittal of the hearing examiner's
 186 report and recommendation, any person who, or association which,
 187 appeared and testified in person or by counsel at the hearing before
 188 the examiner may request, in writing, an opportunity to present oral
 189 argument [before] to the [board of appeals prior to its rendering of]
 190 Board before it issues a decision. [Such] Any request for oral
 191 argument must explicitly state the [matters desired] issues to be
 192 presented at the oral argument. [; and if] If oral argument is granted,
 193 the party [or parties] who sought the oral argument [shall] must be
 194 limited [at the argument] to the [presentation of the matters of record]
 195 issues stated in the request [or to such matters] and any other issue
 196 specified in the order [granting] allowing oral argument. The Board
 197 [of appeals] may, in its discretion, grant or deny [such] a request for
 198 oral argument.
- 199 (c) [Thereafter, the board shall either] The Board must, after oral
 200 argument if argument is allowed:
- 201 (1) decide the [application, as hereinafter provided,] matter on the
 202 basis of the evidence of record and the hearing examiner's
 203 report and recommendation, or

204 (2) remand the [application] matter to the hearing examiner for
 205 clarification or [the] taking [of] additional evidence, [if
 206 deemed] as appropriate.

207 [(c) An application, petition or appeal which is the subject matter of the
 208 hearing examiner's report and recommendation shall either be
 209 approved or denied on the merits, approved with modifications, or
 210 denied for want of the necessary total affirmative votes, or dismissed,
 211 or remanded for a stated purpose or allowed to be withdrawn.]

212 [(d) A decision of the board of appeals remanding to the hearing examiner,
 213 approving, approving with modifications, denying or dismissing any
 214 application, petition or appeal which is the subject matter of a report
 215 and recommendation of the examiner shall be rendered within thirty
 216 (30) days of the transmittal of the examiner's report and
 217 recommendation, unless such time is extended by the board. All
 218 quorum, voting and appeal requirements ordinarily applicable to
 219 proceedings before the board of appeals shall apply.]

220 **2-140. Powers, duties and functions.**

221 * * *

222 (c) The Office may hear, and submit a written report and
 223 recommendation to the specified officer or body on, any:

- 224 (1) petition to the County Council to grant, modify, or revoke a
 225 special exception, as provided in Chapter 59;
- 226 (2) designation by the County Council of a geographic area as a
 227 community redevelopment area; or
- 228 (3) matter referred by the Board of Appeals under Section [2-
 229 112(b)] 2-113A.

230 * * *

231 **8-23. Board of appeals.**

232 [(a) The county board of appeals, established by section 2-108 of this
 233 Code shall have full and exclusive authority to hear and decide all
 234 appeals taken from decisions of the department in the administration
 235 of this chapter. Any person aggrieved by the issuance, denial, renewal
 236 or revocation of a permit or any other decision or order of the
 237 department made hereunder may appeal to the county board of
 238 appeals, which after hearing upon notice shall have authority to
 239 affirm, modify or reverse the order or decision so made. Upon such
 240 appeals the board shall decide whether such decision or order was
 241 made in accordance with the provisions of this chapter and all other
 242 applicable federal, state and local laws and regulations.


243 (b) Appeals from decisions of the county board of appeals shall be in
 244 accordance with section 2-114 of this Code.]

245 (a) Any person aggrieved by the issuance, denial, renewal, or revocation
 246 of a permit or any other decision or order of the Department under this
 247 Chapter may appeal to the County Board of Appeals within 30 days
 248 after the permit is issued, denied, renewed, or revoked, or the order or
 249 decision is issued.

250 (b) After notice and hearing, the Board may affirm, modify, or reverse the
 251 order or decision of the Department.

252 (c) Any party may appeal a decision of the Board to the Circuit Court
 253 under Section 2-114.

254 *Approved:*

255 
 256 Blair G. Ewing, President, County Council

11/29/01
 Date

257 *Approved:*

258

259



Douglas M. Duncan, County Executive 10/6/01
Date

260 *This is a correct copy of Council action.*

261

262



Mary A. Edgar, CMC, Clerk of the Council 12/10/01
Date