

## Key

Red underlined text provides either the section reference or a use name change in the draft

Text highlighted in turquoise deals with grandfathering language. All grandfathering provisions are located in Sec. 8.7.1 of draft

Text with ~~red strikethrough~~ has not been included in the draft Zoning Code

3/26/2013

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## Division 59-A-4. County Board of Appeals.

### Sec. 59-A-4.1. Authority and powers.

#### 59-A-4.11. Authority.

The County Board of Appeals may hear and decide the following matters as provided in Section 2-112:

- (a) Petitions for special exceptions, subject to articles 59-G-1 and 59-G-2. Sec. 8.3.1.E. Conditional Use Plan Decision
- (b) Petitions for variances from the strict application of this chapter, as provided in article 59-G-3. Sec. 8.3.2.E. Variance Decision
- (c) Appeals from any refusal to issue a building or use-and-occupancy permit, or from any order or decision of the Department or the Commission, regarding an application for a building or other permit, or by any other officer or body, under this chapter. Sec. 8.6.1.C.1-2
- (d) Appeals in regard to property affected by the master plan of highways. Sec. 8.6.1.C.1.b
- (e) ~~Petitions concerning public nuisances as specified in section 59-A-5.7.~~
- (f) ~~Petitions for an increase in the proportion of guest rooms to more than 20 percent, but not more than 45 percent of the total units in apartment hotels, under the hotel-motel special exception.~~
- (g) Appeals from an action or decision of the Sign Review Board under Section 59-F-10.2. Sec. 8.4.4.D & 8.4.5.D Sign Permit and Sign Permit Variance Appeals
- (h) Appeals from the issuance, revocation, suspension, or refusal to renew a sign installer license under Section 59-F-9.2. Sec. 8.4.6.F Sign Installer License Appeal

#### 59-A-4.12. Powers.

##### 59-A-4.121. Witnesses.

The Board may compel the attendance of witnesses at hearings or meetings, and the chair or another member may administer oaths. Sec. 8.6.1.A. Board of Appeals Powers

##### 59-A-4.122. Quorums.

In hearing and deciding any matter under this chapter, not less than 3 members of the Board constitutes a quorum. The Board must keep minutes of its proceedings, meetings and hearings. Sec. 8.6.1.B.1. Board of Appeals Powers

#### **59-A-4.123. Adoption of resolutions.**

(a) The Board must take each final action under this Chapter by written resolution. Each resolution must contain a statement of the grounds and findings forming the basis for each decision, and the full text of the resolution and the record of the members' votes must be incorporated into the Board minutes. Sec. 8.6.1.B.3. Board of Appeals Duties

(b) Any action or decision of the Board under this Chapter, ~~except a decision on a petition to grant, revoke, suspend, modify, amend, or extend the time in which to implement a special exception~~, requires the affirmative vote of at least 3 members. Sec. 8.6.1.B.3 Board of Appeals Duties

~~(c) The affirmative vote of at least 4 members is required to adopt a resolution granting, revoking, suspending, modifying, amending, or extending the time in which to implement a special exception. However, any action regarding the following special exceptions in an agricultural zone requires the vote of 3 members:-~~

~~———Agricultural processing~~

~~———Blacksmith~~

~~———Country market~~

~~———Equestrian Facility~~

~~———Grain elevator~~

~~———Manufacture of mulch~~

~~———Milk plant~~

~~———Retail nursery or garden center~~

~~———Sawmills~~

~~———Wholesale nursery or greenhouse~~

~~———Winery~~

~~———Farm machinery, sales and service~~

~~———Farm supplies~~

~~———Temporary structures for sale of farm products~~

All Conditional Uses will require 3 affirmative votes for approval.

(d) Any Board member who votes on a special exception and was not present for any portion of the hearing must read and sign the transcript of that portion of the testimony and must review all exhibits introduced at the hearing. [Sec. 8.3.1.E.2.a. Conditional Use Plan Decision](#)

(e) Any petition for a special exception or modification of a special exception filed with the Board of Appeals before June 10, 1997 is subject to the vote requirement in effect when the petition was filed.

(f) The affirmative vote of a majority of the Board members present and voting is required to adopt a procedural motion regarding a special exception. [Sec. 8.6.1.B.3](#)

(g) Any resolution is statutorily denied if the necessary total of affirmative votes is not achieved for any reason. [Sec. 8.3.1.E.2.a. Conditional Use Approval Decision](#) The Board minutes must reflect the Board's decisions and actions. [Sec. 8.6.1.B.2. Board of Appeals duty](#)

A petition for a special exception or variance must not be accepted for filing or heard by the Board for ~~36-18~~ months after the Board's final action denying any prior petition for the same category of special exception or for a variance seeking substantially the same relief concerning any portion of the same property, unless the Board finds that the applicant has shown substantial new facts which would warrant reapplication. If the action taken by the Board is appealed to any court, the time period runs from the date of final disposition of the appeal. ~~This limitation does not affect the authority of the Board to grant a rehearing under the Board's rules of procedure.~~ [Sec. 8.3.1.F. 2](#) and [Sec. 8.3.2.F.2](#)

#### **59-A-4.124. Technical assistance.**

~~—For assistance in reaching decisions on variances or special exceptions, the Board may request technical service, advice, data or factual evidence from the Planning Board, the county government, or other sources.~~ The Board may at any time during the proceedings call any witness. [Sec. 8.6.1 Board of Appeals](#)

#### **59-A-4.125. Hearing examiner.**

(a) The Hearing Examiner's office has the functions and duties of scheduling and conducting public hearings and rendering written reports and recommendations to the County Board of Appeals on the following matters:

(1) any petition for a special exception [Sec. 8.3.1.C.3.a. Conditional Use Review and Recommendation](#); and

(2) upon request of the Board and with approval of 3 of its members, any other matter pending before the Board. [Sec. 8.6.2.B.2. Hearing Examiner Duties](#)

(b) Except as provided in Section 59-G-1.12, the County Board of Appeals has the sole authority to render a decision upon the merits of any petition for a special exception or any other matter referred to the office by the Board. [Sec. 8.3.1.B.1 Conditional Use Plan Application Requirements](#)

#### **59-A-4.126. Limitation.**

Nothing in this chapter authorizes the Board to reverse or modify any refusal of permit or any other order, requirement, decision or determination which conforms to this chapter and which, therefore, is not erroneous, or to validate, ratify or legalize any violation of law or regulation. The Board must not amend any provision of this chapter or the zoning map. [Sec. 8.6.1.A.2. Board of Appeals Powers](#)

Nothing prohibits the Board from accepting for filing or hearing, within the ~~36-18~~ month limitation period, a later petition concerning the same property if it finds that, after final action on the first petition, a substantial change in

the facts and circumstances which were or would have been material in the original hearing may have affected the merits of the 2 petitions. Sec. 8.3.1.F.1. Subsequent applications ~~The affirmative vote of at least 4 members is required to consider a later petition in a special exception case.~~

#### **59-A-4.127. Binding testimony.**

~~—Special exceptions or variances granted by the Board must be implemented in accordance with the terms and conditions approved in the Board's opinion. The conditions must require that the petitioner is bound by all of the following:~~

~~—(a) Petitioner's testimony and exhibits of record;~~

~~—(b) The testimony of the petitioner's witnesses and attorney's representations, to the extent that the evidence and representations are identified in the Board's opinion.~~

#### **59-A-4.128. Report.**

The Planning Board or its technical staff must submit to the Board Hearing Examiner at least 10.5 days before the date set for public hearing, a report reviewing any petition for special exception. Sec. 8.3.1.C.2.b. Planning Board Review Upon request of the Board of Appeals, the Planning Board or its technical staff must also submit a report reviewing and making a recommendation on an application for a variance. Sec. 8.3.2.C. Variance Review and Recommendation ~~The reports must comply with a format and other requirements established by agreement of the Planning Board and the Board of Appeals. The report must be included in the application file and treated as part of the record of the application. Any report filed under this section does not affect the applicant's burden of proof and persuasion under Section 59-G-1.21(b).~~

### **Sec. 59-A-4.2. Petitions for special exceptions and variances.**

#### **59-A-4.21. Filing of petition.**

A petition for a special exception or variance must be filed with the Board or, where appropriate, with the Hearing Examiner ~~on forms provided for that purpose~~, together with the fee set by the County Council by resolution. Sec. 8.3.1.B.1 and Sec. 8.3.2.B.1. Application Requirements If a variance is needed because of an error by a government agency in its approval of a site plan under Section 59-D-3, the Board may waive or refund all or part of the filing fee. Sec. 8.6.5.C. Fees

#### **59-A-4.22. Data to accompany petition for special exception. Sec. 8.3.1.B. Conditional Use Plan Application Requirements**

(a) Each petition for special exception must be accompanied at the time of its filing by ~~8 copies~~ of a statement that includes:

(1) Survey plats or other accurate drawings showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed to be erected, and the distances of such structures from the nearest property lines. Sec. 8.3.1.B.5.c .vii & Sec. 8.3.1.B.5.c.x

(2) Plans, architectural drawings, photographs, elevations, specifications, or other detailed information depicting fully the exterior appearance of existing and proposed construction, including signs, involved in the petition. This requirement may be satisfied by site plan documents which comply with the requirements of section 59-D-3.2, as provided in subsection (b)(2). Sec. 8.3.1.B.5.c.x

(3) A statement explaining in detail how the special exception would be operated, including hours of operation, number of anticipated employees, occupants and clientele, equipment involved, and any special conditions or limits which the applicant proposes. Sec. 8.3.1.B.5.c.ix

(4) Complete information concerning the size, type and location of any existing and proposed trees, landscaping and screening, and exterior illumination. This requirement may be satisfied by site plan documents which comply with the requirements of section 59-D-3.2, as provided in subsection (b)(2). Sec. 8.3.1.B.5.c.x

(5) Certified copy of official zoning vicinity map of 1000-foot radius surrounding the subject property Sec. 8.3.1.B.5.c.i ~~and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties~~, along with a list of those adjoining and confronting property owners in the county tax records who are entitled to notice of the filing under subsection 59-A-4.46. Sec. 8.3.1.B.5.c.ii

(6) If the applicant is not the owner of the property involved, the lease, rental agreement or contract to purchase by which the applicant's legal right to prosecute the petition is established. Sec. 8.3.1.B.2.a

~~(7) Applicable master plan maps reflecting proposed land use, zoning, and transportation, together with any other portions of the applicable master plan which the applicant considers relevant.~~

(8) Except a petition for a telecommunications facility, a preliminary forest conservation plan prepared under Chapter 22A or a confirmation that the inventory is not required under Chapter 22A-5. Sec. 8.3.1.B.5.c.iv

(9) An approved natural resources inventory prepared in accordance with the technical manual adopted by the Planning Board or a confirmation that the inventory is not required under Chapter 22A-5. Sec. 8.3.1.B.5.c.iii

(10) A preliminary or final water quality plan if the property is located in a special protection area subject to Chapter 19. Sec. 8.3.1.B.5.c.v

~~(11) All additional exhibits which the applicant intends to introduce.~~

~~(12) A summary of what the applicant expects to prove, including the names of applicant's witnesses, summaries of the testimonies of expert witnesses, and the estimated time required for presentation of the applicant's case.~~

(13) If the petition is for a telecommunications facility:

~~(A) an approved preliminary forest conservation plan prepared under Chapter 22A or a confirmation that the plan is not required under Chapter 22A-5; and~~

(B) photographic simulations of the tower and site, including equipment areas at the base, as seen from at least three directions, including from adjacent and confronting properties. Sec. 8.3.1.B.5.xii

~~(b) For the planning board to review a petition, as provided in subsection 59-A-4.48:~~

~~(1) The applicant must submit documents that are the equivalent of those required by the planning board in the administration of section 50-35(k) if:~~

~~(i) A preliminary plan of subdivision is required by chapter 50 before development of the special exception use; or~~

~~\_\_\_\_\_ (ii) The Planning Board or staff determine that the information provided by such a study is necessary to evaluate the adequacy of public facilities in order to assess the impact of the special exception on surrounding uses because of the scale of the use.~~

~~\_\_\_\_\_ (2) The applicant must submit documents that are the equivalent of those required by subsections 59-D-3.22 and 59-D-3.23 if:~~

~~\_\_\_\_\_ (i) The property is in a zone requiring site plan approval in accordance with article 59-C and article 59-D, or~~

~~\_\_\_\_\_ (ii) The property is not in a zone requiring site plan approval, but the Planning Board or staff determines that the information required by these sections is necessary to evaluate the impact of the special exception on surrounding uses, because of disparity in the bulk or scale of the proposed use in relation to surrounding uses, the nature of the use in relation to the character of the surrounding area, or other significant factors.~~

**59-A-4.23. Data to accompany petition for variance. Sec. 8.3.2.B, but altered as noted below**

Each request for variance must be accompanied at the time of filing by ~~4 copies~~ of a statement containing the information specified in paragraphs (1), (2), (5), (10) and (11) of Section 59-A-4.22. 1,2,5 from 59-A-4.22 were retained, although rephrased with some deletions; 10 and 11 deleted.

**59-A-4.24. Amendment of petition.**

An applicant may amend either petition before the hearing if the Board approves a motion to amend after giving 10 days' notice to all parties entitled to original notice of filing. If an amendment would alter materially an applicant's proposal or evidence, the Board may postpone the hearing to a date that permits all interested parties adequate time to review the amendment. Each proposed amendment must also be referred to the Planning Board under subsection 59-A-4.48(c). Nothing in this section prohibits the Board, during the hearing or at any time before the record is closed, from requesting an applicant to revise any aspect of a proposal. Sec. 8.3.1.C.4 (Conditional Use) & Sec. 8.3.2.C.4 (Variance)

**59-A-4.25. Withdrawal of petition.**

When an application for a special exception is withdrawn, notice must be sent to all parties entitled to notice of the filing of the petition. When a case is withdrawn at least 30 days before the initial hearing, the Board may refund a part of the filing fee as authorized in its rules, and the Board may allow the application to be withdrawn without prejudice to the limitations on refiling specified in Section 59-A-4.126. When a case is withdrawn 30 days or less from the date of the hearing, withdrawal must be with prejudice. Sec. 8.3.1.C.5. Withdrawal of an Application

**Sec. 59-A-4.3. Filing of appeals. Sec. 8.6.1. Board of Appeals**

(a) Appeals to the Board may be made by any person, Board, association, corporation or official allegedly aggrieved by the grant or refusal of a building or use and occupancy permit or by any other administrative decision based or claimed to be based, in whole or in part, upon this chapter, including the zoning map. Sec. 8.6.1.C.1

(b) Any appeal relative to a variance or any administrative appeal may be filed with the Board only after refusal of issuance or revocation of a building or use-and-occupancy permit by the Department or after the issuance of a permit in cases where it is alleged that such permit has been issued erroneously. Sec. 8.6.1.C.2

(c) Appeals must be made on forms provided for that purpose, and all information required on such forms must be furnished by the appellant. Forms must be filed with the clerk to the Board, and the appellant must pay the clerk for expenses incidental to the appeal. No form will be accepted by the clerk unless it contains all pertinent information and is accompanied by the required fee to defray expenses. Sec. 8.6.1.C.3

~~—(d)— Appeals and applications filed in proper form shall be numbered serially, docketed and placed upon the calendar of the Board. The calendar of appeals to be heard must be posted conspicuously in the office of the Board during the period before such hearing date.~~

(e) Except as otherwise specifically provided by statute, any administrative appeals to the Board from any action, inaction, decision or order of a Department of the county government must be considered de novo. Sec. 8.6.1.C.4

The Department must comply with the prehearing submission requirements of chapter 2A. Sec. 8.6.1.C.5

#### **Sec. 59-A-4.4. Public hearings on petitions and appeals.**

##### **59-A-4.41. Requirement and scheduling.**

(a) Requirement. The Board or the Hearing Examiner must hold a public hearing on any petition for the grant of a special exception or variance and on any other matter Sec. 8.6.1. Board of Appeals and Sec. 8.6.2.B. Hearing Examiner as is provided for by this Chapter or by the Board's Rules of Procedure. Sec. 8.3.1.C.3.a for conditional use and Sec. 8.3.2.E.1 for variance

(b) Scheduling. Div. 8.5. Notice Standards, but details have changed

(1) The hearing in the case of any petition for grant of special exception must be held not sooner than 60 days following the mailing of the notice of the filing of the petition pursuant to Paragraph (a) of section 59-A-4.46. In the case of any other matter within the Board's purview such hearing may be held not sooner than 30 days after the notice is mailed. Sec. 8.5.1.E.1 Mailed Hearing Notice (with modifications)

~~The Board, with an affirmative vote of at least 3 members, may reduce the notice period required for public hearing on a petition for a variance or special exception, or on an appeal from an administrative action if:~~

~~—(A)— the Board finds that an emergency poses an immediate threat to the public health, safety, convenience, welfare or necessity; or~~

~~—(B)— a delay would impose an unusual individual or community hardship.~~

In a situation in which a property owner holds a valid building permit to construct a single-family or townhouse structure in a new residential subdivision and an error committed or discovered during the course of construction on the site results in a violation of the specified setback requirements in the zone in which the property is located, and the variance required to overcome this error would involve less than 10 percent of the particular setback requirement which had been violated, the Board may, in response to a written request by the property owner, and by unanimous vote of the members present, hear the appellant's appeal for a variance at the first regularly-scheduled Board of Appeals public hearing following the posting of the property in accordance with the requirements of section 59-A-4.43. The appellant is required to file all documents and information required by section 59-A-4.23. Sec. 8.3.2.C.3

(2) A hearing on a petition for a special exception filed in the case of a registered home occupation or home health practitioner's office found to be in violation of section 59-A-6.1 must be scheduled within 30 days, or as soon thereafter as the Hearing Examiner's calendar permits. The Hearing Examiner does not have authority to grant to the applicant any extension of the hearing in such a case. Sec. 8.4.3.F.2.b

~~—59-A-4.42. Calendar of hearings.~~

~~The Board must prepare, on or before the 15th day of each month, a calendar of the cases scheduled to be heard for the following month or months and must make such calendar available by mail to newspapers published and in general circulation in the county and to such individuals or organizations that request regular distribution.~~

**59-A-4.43. Posting of property. Sec. 8.5.1. C. Application Sign- some details have changed**

(a) Except as provided in section 59-A-4.41(b)(2), within 3 days after the filing of a petition for a special exception or variance, the applicant must erect a sign, furnished by the Board or the Hearing Examiner, on the subject property within 10 feet of the boundary line of each public road which abuts the property and, if no public road abuts the property, then facing in a manner most readily visible to the public. If the land does not abut a public road, then in addition to a sign placed on the property, a sign must be placed within 10 feet of the right-of-way of the nearest most traveled public road. However, if the owner of the property abutting the nearest most traveled public road does not permit the posting of the sign, and the applicant files an affidavit stating that fact, then a sign must be posted as the Board or Hearing Examiner directs.

(b) The sign must be erected so that the bottom of the sign is at least 2 ½ feet from the ground. The sign must be of such material and color or colors as the Board or Department specifies, with the height and width of not less than 2 and 3 feet, respectively, and must contain in conspicuous lettering not less than 4 inches in height, the telephone number of the Board and the words:

SPECIAL EXCEPTION PENDING FOR

(1)

\_\_\_\_\_

BOARD OF APPEALS HEARING CASE NO.

(2) \_\_\_\_\_

(PENDING)

VARIANCE PENDING FOR

(1) \_\_\_\_\_

BOARD OF APPEALS HEARING CASE NO.

(2) \_\_\_\_\_

(PENDING)

The blank no. (1) must be filled in with the specific request for either a special exception or variance as specified in the application. The blank no. (2) must be filled in by the assigned case number. If the subject property lies within more than one block as shown on a deed or plat recorded in the land records of the County, then a sign must be erected by the applicant on the land in each such block. At the hearing, it is the duty of the applicant to certify by affidavit that the provisions of this section have been complied with and the sign or other posting has been continuously maintained up to the time of hearing.

~~(c) It is unlawful for any person, except the applicant or the Department or an authorized agent of either, to remove or tamper with any sign during the period it is required to be maintained under this section.~~



~~—(d)— Additional requirements regarding such signs, including deposits for signs, refunds of deposits and removal of signs, must be as specified by the Board in its rules of procedure.~~

#### **59-A-4.44. Continuation of adjourned hearings.**

Hearings may be adjourned, from time to time, and if the time and place of the continued hearing be publicly announced at the time of the adjournment, no further notice of such continued hearing is required; otherwise, at least 15 days notice must be given to all parties required to be notified of the original hearing. Sec 8.5.2.E.4

#### **59-A-4.45. Advertisement.**

~~In cases of a petition for special exception or variance, the board may require additional notice of hearing by one advertisement in 2 newspapers of general circulation in the community affected by such petition. Such advertisement must appear not less than 7 days prior to the day of public hearing and contain the same information as is required in the notice sent by mail. The cost of such advertisement must be paid by the petitioner.~~

#### **59-A-4.46. Notice of filing. Sec. 8.5.2.D Mailed Application Notice**

~~—(a)— Except as provided in Section 59-A-4.41(b)(2), within 7 days after the filing of any appeal, petition for a special exception, request for a variance, request for relief from provisions of a master highway plan, or other matter within the Board's jurisdiction, the Board must forward a complete copy of the filing, including accompanying data, to the County Planning Board and must forward notice of the filing, in the form specified in subsection (b), to:~~

~~—(1)— the Department,~~

~~—(2)— the Washington Suburban Sanitary Commission,~~

~~—(3)— the State Highway Administration,~~

~~—(4)— the County Board of Education,~~

(5) the owners, as specified by the applicant at the time of filing, of all properties:

(A) contiguous to the property with which the case is concerned, and

(B) opposite the property measured at right angles to the intervening street or streets,

(6) the president or other designated representative, as shown by the records of the Board of Appeals or the County Planning Board, of any local citizens association or associations, and

~~—(7)— any municipality or special taxing district where the subject property is located.~~

~~The Board may, in its discretion, send notice of the filing to other interested parties, organizations or agencies.~~

(b) Each notice must contain the name of the appellant, applicant or petitioner, the name of the property owner, the case number, the telephone number, office address and business hours of the Board, and, if known, the date, time and place fixed for the hearing. Each notice must state with particularity the nature of the special exception, variance, administrative appeal or other relief requested, and must inform the recipient that the Board will mail the recipient upon request a copy of the Board's rules of procedure, as well as notification that the zoning ordinance is available for reference in the reference section of the County libraries, the office of the County Board of Appeals, the Department, and the County Planning Board. For petitions for special exceptions or variances, each notice must also:

(1) State that a copy of the applicant's complete submission, including exhibits and testimony summaries, is available for inspection at the Board's office and may be borrowed for copying or other temporary use, upon payment of a deposit as specified by the Board's rules of procedure;

(2) Inform the recipient of the requirements for prehearing statements for groups or organizations desiring to appear in opposition;

(3) Advise the recipient as to how a complete copy of the zoning ordinance may be obtained and of the fact that the petition has been referred to the Planning Board for review and recommendation where required.

**59-A-4.47. Subsequent notice of hearing. Sec. 8.5.2.E. Mailed Hearing Notice, with significant changes**

Unless the notice referred to in subsections (a) and (b) of section 59-A-4.46 contains the date, time and place fixed for the hearing, subsequent notice of such hearing must be sent to all those designated in subsection (a) of section 59-A-4.46 at least 30 days prior to the date set for the hearing except in cases of emergency or hardship as specified in section 59-A-4.41. If a hearing for which notice has been given is postponed, those designated to receive notice must be given at least 15 days written notice of the rescheduled hearing, except as provided in section 59-A-4.44, "Continuation of adjourned hearing."

**59-A-4.48. Planning board report and recommendation.**

(a) The County Planning Board or its technical staff must submit a report reviewing any petition for a special exception to the Hearing Examiner Board at least ~~5 working days~~ 10 days prior to the date set for the public hearing. Sec. 8.3.1.C.2.b. Planning Board Review ~~This report must be in accordance with the format and other requirements established by agreement of the Planning Board and the Board of Appeals. The Board must incorporate this report in the application file, and the report then becomes a part of the record of the application. Nothing in this section affects the applicant's burden of proof and persuasion as provided in section 59-G-1.21.~~

(b) If the applicant has been required to submit subdivision or site plan documents, as provided in section 59-A-4.22(b), the Planning Board must advise the Board of Appeals as follows:

(1) If approval of a preliminary plan of subdivision is required, the Planning Board must advise the Board of Appeals that:

(i) The adequacy of public facilities will be determined by the Planning Board at the time of subdivision approval, as provided in subsection (a)(8) of section 59-G-1.21, title "General Conditions;" or

(ii) The inadequacy is so severe that it is unlikely that the development of the special exception use would comply with provisions of section 50-35(k), title "Adequate Public Facilities." Sec. 8.3.1.D.1.e.ii

(2) If the special exception use will not require approval of a preliminary plan of subdivision in accordance with chapter 50 of this Code, title "Subdivision of Land," the ~~Planning Board must advise the~~ Board of Appeals or Hearing Examiner must find as to the adequacy of public facilities, including notification as to any relevant existing moratorium on development that is due to inadequate public facilities. Sec. 8.3.1.D.1.e.i

~~——(3) If site plan approval is required in accordance with division 59-D-3 or recommended by the Planning Board as a condition of the special exception, the Planning Board must advise the Board as to the specific criteria by which the site plan will be evaluated.~~

(c) After the Planning Board or its technical staff has issued its initial report and recommendation, the applicant must transmit to the Planning Board a copy of any subsequent amendment to the petition. The record must remain open for a reasonable time to provide an opportunity for the Planning Board or its staff to comment. Within

that time, the Planning Board or its staff must comment on the amendment or state that no further review and comment are necessary. [Sec. 8.3.1.C.4.b](#)

~~—59-A-4.49. Opposing or supporting statements.~~

~~Groups or organizations intending to appear in opposition to a petition for special exception or request for variance must file statements at least 10 days prior to the hearing date indicating what such group expects to prove, the names of witnesses, the estimated time for presentation of such group's case and such other materials as are required by Chapter 2A. The statement must be accompanied by copies of documentary evidence and summaries of the testimony of expert witnesses on behalf of the opposition group. Notwithstanding Chapter 2A, nothing herein can preclude the Board from permitting an individual to testify on his own behalf without prior notice either for or against the special exception or variance. No prior filing of an opposition statement is required in cases heard on less than 30 days' notice. [HE Rules of Procedure 3.2](#)~~

**Sec. 59-A-4.5. Decision.**

**59-A-4.51. Notice of decision.**

A copy of the decision of the Board or Hearing Examiner, as the case may be, on each petition for a special exception or variance must be transmitted to the petitioner, the Planning Commission, the Department, the Department of Finance, all parties entitled to notice of filing, and any other parties of record. [Sec. 8.3.1. H.2. Recording Procedures](#)

**59-A-4.52. Zoning map to indicate decision.**

Decisions with regard to petitions for special exceptions or variances must be indicated in the proper place on the official zoning maps of the Commission and the Department by use of an appropriate code number or symbol. [Sec. 8.3.1. H.3. Recording Procedures](#)

**59-A-4.53. Duration of validity.**

(a) **Variance.** A decision of the board granting a variance is valid for 12 months, during which time a building permit must be obtained and the erection or alteration started. [Sec. 8.3.2.G.1, Scope of Approval](#)

(b) **Special exception.** [Sec. 8.3.1.G.1, Scope of Approval](#)

(1) A decision of the Board, Hearing Examiner, or County Council approving the special exception is valid for 24 months.

(2) A special exception is not valid after 24 months if the use is not established or a building permit is not obtained and construction started within the period.

(c) **Extension of time.** The board may extend the time limit for a variance or special exception if the evidence of record establishes that drawing of architectural plans, preparation of the land, or other factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity. For a special exception, each extension must not exceed 12 months. If the Board grants an extension, the Board must set a date by which the erection or alteration of the building must be started or the use established.

(d) **Appeal.** If a decision on a variance or a special exception is appealed to a court, the time limits in this section run from the date of the final court order in the appeal. [Sec. 8.3.1.G.1 and Sec. 8.3.2.G.2](#)

## Sec. 59-A-4.6. Public hearings by Hearing Examiner.

### 59-A-4.61. Generally.

(a) The Hearing Examiner must conduct public hearings in accordance with rules of procedure approved by the County Council. Sec. 8.3.1.C.3, HE Review if BOA is Deciding Body A hearing may be held no sooner than ~~60-10~~ days after the notice of filing of the petition is mailed under Section 59-A-4.46 Sec. 8.5.2.E.1 (a). A hearing may be continued, suspended or deferred in accordance with Section 59-A-4.44. Sec. 8.5.2.E.4 The Planning Board or its technical staff must submit to the Hearing Examiner and the Board of Appeals at least ~~5-10~~ days before the date set for public hearing, a report reviewing any petition for a special exception or appeal ~~in accordance with a format and other requirements established by agreement of the Planning Board, Board of Appeals and Hearing Examiner. The report is a part of the record of the case.~~ Sec. 8.3.1.C.2 Planning Board Review.

~~—(b)— Recommended findings, decisions and orders of the Hearing Examiner must be based on the evidence of record.~~

(c) Within 30 days after the closing of the record on any matter, the Examiner must render a written report and recommendation setting forth a description of the case, findings and recommendations, including any conditions the examiner deems necessary. Sec. 8.3.1.C.3.d, HE examiner review if BOA deciding body Any recommendation with respect to a special exception use or appeal must be based upon the requirements and standards set forth in Section 59-G-1.2 as well as individual standards and requirements contained within the specific provisions of this zoning ordinance pertaining to the respective zones and the special exception use or to the appeal. Sec. 8.3.1.D.1.b. Approval Criteria Any other matters of record, which, in the opinion of the Examiner, are relevant and pertinent for a decision may be included. Sec. 8.3.1.E.3, Decision?? The Hearing Examiner by order may extend the time for such report. Sec. 8.3.1.C.3.e, HE Review if BOA Deciding Body

(d) When the Hearing Examiner transmits a report to the Board of Appeals, the Examiner must at the same time send written notification that the report and recommendation has been issued, ~~by regular mail,~~ to the petitioner, ~~the Planning Board,~~ and all persons or entities who appeared and testified in person or by counsel at the hearing, as evidenced by the hearing transcript. ~~The notification must briefly describe the special exception requested, state whether the Hearing Examiner recommended approval or denial, provide instructions to locate a readable and printable copy of the report on the County's web site, and identify the right to request oral argument before the Board of Appeals. The Hearing Examiner must send a paper copy of the report and recommendation to the Planning Board on request, and to any person or entity entitled to notice of the report's issuance who states in writing that they do not have access to email and/or the internet.~~ Sec. 8.3.1.C.3.d. Hearing Examiner Review

(e) Within 10 days after transmittal of the Examiner's report any aggrieved party may file a written request for an opportunity to present oral argument before the County Council or Board, whichever has the authority to issue a decision on the matter under consideration. Sec. 8.3.1.C.3.f HE Review if BOA Deciding ~~An aggrieved party includes any person or association appearing and participating in person, in writing, or by counsel at the hearing before the examiner, or any party who would be aggrieved by the decision.~~ The request must explicitly state the matters desired to be presented at the oral argument and, if oral argument is granted, the argument must be limited to matters contained in the record compiled by the hearing examiner. The ~~Council or~~ Board, as appropriate, may in its discretion, grant or deny an oral argument request. Thereafter, the matter must be decided either as provided below, or remanded to the Examiner for clarification or the taking of additional evidence, if appropriate. Sec. 8.3.1.C.3.e HE Review if BOA Deciding. ~~Any decision of the Council or Board not appealed within the prescribed time is final.~~

(f) Any matter heard by the Hearing Examiner must be either approved or denied on the merits, or denied for want of the necessary total of affirmative votes or dismissed or allowed to be withdrawn. Sec. 8.3.1. E.2 The Board of Appeals may add to, modify, or delete any conditions to a special exception recommended by the Hearing Examiner. Sec. 8.3.1.E.4. Decision ~~The Board may dismiss any petition or appeal if it finds that the application does not conform to any stated procedural requirements of this Article or if the petition or appeal is frivolous or filed for purposes of harassment.~~ The Council or Board may allow an application to be withdrawn in accordance with subsection 59-A-4.25; however, if the request for withdrawal is made after publication of the notice of hearing, no

application for a special exception for the land which is the subject of the application is allowed within the time limitation set forth in Section 59-A-4.123 after the date of the order of the Council or Board approving the withdrawal. ~~Sec. 8.3.1.C.4. Withdrawal of an Application- If the application is not dismissed or allowed to be withdrawn, it must either be approved or denied on the merits, or denied for want of the necessary total of affirmative votes.~~ If an application is denied, a later application for a special exception for the land which was the subject of the previous application is subject to the limitations of Section 59-A-4.123. Sec. 8.3.1.F.1 and Sec. 8.3.2.F.1 (except changed 36 to 18 months)

#### **59-A-4.62. Decision and vote.**

(a) The decision of the ~~Council or~~ Board on any matter heard by the Hearing Examiner must be rendered within 30 days after the Hearing Examiner's report is transmitted, unless the Council or Board extends the time. Sec. 8.3.1.E.2.b, Decision.

(b) The affirmative vote of ~~a majority of the Council or 4~~ 3 members of the Board is required to approve a special exception. ~~The affirmative vote of at least 4~~ 3 members of the Board is required to adopt a resolution granting, revoking, suspending, amending, extending the time in which to implement, or modifying a special exception application, except as provided under Section 59-A-4.123(c)(1). If the necessary number of affirmative votes is not achieved for any reason, the special exception is denied. Sec. 8.3.1.E.2. Decision

(c) Every final decision or order adopted under this section must be accompanied by an opinion of the ~~Council~~ or Board stating its conclusions and reasons ~~or adopting the findings and recommendation of the Hearing Examiner filed in the case record.~~ Sec. 8.6.1.B.3

(d) The Board must promptly mail a copy of every final decision or order adopted under this section to the applicant, the Planning Board, and all persons or associations appearing or testifying personally or by counsel at the hearing as shown by the hearing transcript. The Board must also promptly send a copy to the Supervisor of Assessments for Montgomery County, the Department of Finance, and the Department. Sec. 8.3.1.H.2

(e) ~~All matters decided under this Section must be decided on the basis of the evidence or record; but any matter heard by the Hearing Examiner may be decided solely on the basis of the Examiner's report and recommendation.~~

#### **59-A-4.63. Reconsideration.**

The time to request reconsideration of a final decision of the Council or Board, including a denial for lack of the necessary affirmative votes, runs from the date of the order of approval or denial or from the date the application was denied for lack of the necessary affirmative votes. Sec. 8.3.1.F.2

~~The Council by resolution may adopt Rules of Procedure for itself and the Board to implement this provision.~~

#### **59-A-4.64. Appeal.**

Any party aggrieved by a decision of the Council or Board of Appeals may appeal to the circuit court for the county and thereafter to the Court of Special Appeals within the time and manner prescribed within the Maryland Rules of Procedure relating to administrative appeals. The time for appeal runs from the date of the order of approval or denial or from the date the application was denied for lack of the necessary affirmative votes. Sec. 8.3.1.E.4, Decision (Conditional Use); Sec. 8.2.1.E.5, Decision (FZMA); Sec. 8.2.2.E.4, Decision (Change or Mistake Map Amendment); Sec. 8.2.3.E.4, (Minor Corrective Map Amendments); Sec. 8.2.4.E.5, (Major Corrective Map Amendments); Sec. 8.2.5.E.5, (SMA); Sec. 8.2.6.E.5, (District Map Amendments)

#### **59-A-4.65. Filing fees.**

~~Filing fees for special exceptions decided by the Council must be set by the Council by resolution.~~