

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 16

Bill No. 77 -2021

Introduced by: Deb Jung and Christiana Rigby

AN ACT to provide for a hearing examiner to hear certain matters in the jurisdiction of the Zoning Board; specifying the powers and duties of, and the procedures to be used by, the hearing examiner, including the requirement to issue a certain report; specifying the contents of the report; specifying the duties of the Zoning Board with respect to the actions of the hearing examiner; clarifying when certain mediation occurs; providing for the rights of the parties, including the right to file exceptions, in matters heard by the hearing examiner; and generally relating to Piecemeal map amendments and development plan approvals.

Introduced and read first time _____, 2021. Ordered posted and hearing scheduled.

By order _____
Michelle R. Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2021.

By order _____
Michelle R. Harrod, Administrator

This Bill was read the third time on _____, 2021 and Passed ____, Passed with amendments ____, Failed ____.

By order _____
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2021 at ____ a.m./p.m.

By order _____
Michelle R. Harrod, Administrator

Approved/Vetoed by the County Executive _____, 2021

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; Text in small capitals indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be it enacted** by the County Council of Howard County, Maryland, that the Howard County
2 Code is hereby amended as follows:

3 By amending

4 Title 16 - Planning, zoning and subdivisions and land development regulations.

5 Subtitle 2. - Zoning

6 Sec. 16.203A. Hearing Examiner

7 Sec. 16.204. Piecemeal map amendments and development plan approvals.

8
9

10 **HOWARD COUNTY CODE**

11 **SEC. 16.203A. – HEARING EXAMINER.**

12 (A) *IN GENERAL.*

13 (1) EXCEPT AS SET FORTH IN SECTION 16.203A(A)(3), A HEARING EXAMINER SHALL FIRST
14 HEAR THE PETITIONS THAT ARE AUTHORIZED TO BE HEARD BY THE ZONING BOARD UNDER SECTION
15 16.204 OF THIS SUBTITLE.

16 (2) A HEARING UNDER THIS SECTION SHALL BE HELD IN THE SAME MANNER AS A HEARING
17 THAT THE ZONING BOARD HOLDS UNDER SECTIONS 16.204 AND 16.206 OF THIS SUBTITLE AND THE
18 HEARING EXAMINER SHALL NOT ISSUE A DECISION BUT SHALL ISSUE A REPORT. WHEN THE HEARING
19 EXAMINER HOLDS A HEARING UNDER THIS SECTION, THE HEARING SHALL PROCEED AS SET FORTH IN
20 SECTIONS 16.204 AND 16.206 OF THIS SUBTITLE AS IF THE TERM “ZONING BOARD” OR “CHAIRPERSON”
21 INCLUDES “HEARING EXAMINER.”

22 (3) THE ZONING BOARD SHALL HEAR AND DECIDE A CASE IF:

23 (I) THE HEARING EXAMINER POSITION IS VACANT; OR

24 (II) THE ZONING BOARD DETERMINES THAT THE HEARING EXAMINER IS UNABLE TO
25 HEAR THE CASE BECAUSE OF A CONFLICT OF INTEREST OR OTHER DISQUALIFICATION.

26 (B) *REPORT*

27 (1) (I) THE HEARING EXAMINER SHALL ISSUE A REPORT ON EACH PETITION HEARD BY
28 THE HEARING EXAMINER.

29 (II) THE HEARING EXAMINER SHALL ISSUE THE REPORT WITHIN 60 DAYS AFTER THE
30 CONCLUSION OF THE HEARING UNLESS THE ZONING BOARD SPECIFIES A DIFFERENT TIME.

1 (2) THE REPORT SHALL INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

2 (3) THE REPORT IS NOT AN ORDER OR FINAL ACTION OF THE ZONING BOARD.

3 (4) THE REPORT SHALL BE SIGNED BY THE HEARING EXAMINER AND SENT TO THE ZONING
4 BOARD ADMINISTRATOR TO BE DISTRIBUTED TO THE MEMBERS OF THE ZONING BOARD, EACH PARTY TO
5 THE CASE, AND POSTED ON THE ZONING BOARD'S WEBSITE. THE REPORT SHALL BE DEEMED ISSUED ON
6 THE DATE THAT THE REPORT IS SIGNED BY THE HEARING EXAMINER.

7 (C) *RECORD*

8 FOLLOWING THE CLOSE OF THE RECORD, THE HEARING EXAMINER SHALL SEND THE RECORD TO
9 THE ZONING BOARD ADMINISTRATOR TO BE DISTRIBUTED TO THE MEMBERS OF THE ZONING BOARD.

10 (D) *EXCEPTIONS; ACTIONS BY THE ZONING BOARD.*

11 (1) (I) AFTER A HEARING EXAMINER ISSUES A REPORT, A PARTY MAY SUBMIT TO THE
12 ZONING BOARD EXCEPTIONS TO THE REPORT.

13 (II) EXCEPTIONS SHALL BE IN WRITING AND SHALL BE FILED WITH THE ZONING
14 BOARD WITHIN 20 BUSINESS DAYS AFTER THE HEARING EXAMINER'S REPORT IS ISSUED. THE PARTY
15 FILING EXCEPTIONS SHALL SEND THE EXCEPTIONS TO THE ZONING BOARD ADMINISTRATOR AND ALL
16 OTHER PARTIES IN THE CASE BY BOTH EMAIL AND FIRST-CLASS MAIL, POSTAGE PAID. THE EXCEPTIONS
17 SHALL SPECIFY IN DETAIL THOSE ITEMS TO WHICH THE PARTY EXCEPTS AND THE REASONS WHY THE
18 PARTY EXCEPTS. ANY PARTY MAY FILE A WRITTEN RESPONSE TO ANY OTHER PARTY'S EXCEPTIONS
19 WITHIN 20 BUSINESS DAYS OF THE FILING OF ANY EXCEPTIONS.

20 (III) ON THE FILING OF EXCEPTIONS, THE ZONING BOARD SHALL SCHEDULE AN ORAL
21 ARGUMENT ON THE EXCEPTIONS IN A TIMELY MANNER. THE ORAL ARGUMENT IS LIMITED TO THOSE
22 MATTERS TO WHICH EXCEPTIONS HAVE BEEN TAKEN. EACH PARTY SHALL BE LIMITED TO 30 MINUTES
23 TOTAL OF ORAL ARGUMENT FOR ALL EXCEPTIONS FILED BY THAT PARTY. THE ZONING BOARD MAY
24 CHOOSE TO TAKE EVIDENCE ON AN EXCEPTION.

25 (2) EVERY DECISION AND FINAL ORDER IN A PIECEMEAL MAP AMENDMENT OR DEVELOPMENT
26 PLAN CASE SHALL BE IN WRITING, SIGNED BY A MAJORITY OF THE ENTIRE ZONING BOARD, ATTESTED BY
27 THE ZONING BOARD ADMINISTRATOR, AND SHALL BE ACCOMPANIED BY FINDINGS OF FACT AND
28 CONCLUSIONS OF LAW AND SHALL BE MADE A PART OF THE RECORD OF PROCEEDINGS. THE FINAL ORDER
29 OF THE ZONING BOARD DENYING OR GRANTING THE PETITION FOR A PIECEMEAL MAP AMENDMENT, OR
30 APPROVING OR DISAPPROVING A DEVELOPMENT PLAN, SHALL BE FILED WITH THE DEPARTMENT OF
31 PLANNING AND ZONING, WHICH SHALL MAINTAIN IT AS PART OF THE OFFICIAL RECORDS OF THE COUNTY.

1 THE ZONING BOARD MAY DECIDE BY MAJORITY VOTE TO REMAND THE PETITION TO THE HEARING
2 EXAMINER FOR ADDITIONAL TESTIMONY AND HEARING.

3 Sec. 16.204. - Piecemeal map amendments and development plan approvals.

4 (a) *Zoning Board.* The Zoning Board may exercise the Zoning Authority delegated to it by this subtitle
5 to make decisions on piecemeal map amendments and development plans in pursuance of a petition filed
6 in accordance with section 16.205 of this subtitle and shall establish procedures for doing so.

7 (b) *Mediation.* The Zoning Board may refer an applicant and other persons affected by a pending
8 application, other than piecemeal map amendment cases based on the change/mistake rule as established
9 by Maryland Case Law, to the Mediation and Conflict Resolution Center, Inc., of Howard County or a
10 conflict resolution or mediation service which has been deemed acceptable by the Board. The purpose of
11 such referral shall be to resolve conflicts between these parties, but the results thereof shall not bind the
12 Board to any result. Any resolution that is agreed upon by both parties shall be subject to findings of the
13 Board required by law. Petition approval may not be granted solely on the basis of mediation resolution.

14 A referral may be made either before or after a public hearing on a pending petition decision, but only after
15 an application is deemed complete. ANY MEDIATION [[Mediation]] shall [[not]] occur [[after]] PRIOR TO the
16 Zoning Board [[votes]] VOTING on a petition. The cost of the mediation service shall be incurred by the
17 petitioner.

18 If no agreement is reached between the parties within 45 days, or at anytime the mediator deems any further
19 meetings futile, the Board shall continue with its proceedings or deliberations on the matter. If both parties
20 agree, mediation may be extended past 45 days to a period of time as agreed to by the parties.

21 Nothing in this section shall preclude the parties from meeting on their own at any time, with or without a
22 mediator, in an attempt to resolve their differences. It is the policy of the County to encourage applicants
23 and neighbors to have early discussions on proposed projects so that differences may be resolved prior to
24 the submission of an application.

25 (c) *Public Hearing Required.* The Zoning Board shall hold a hearing on piecemeal map amendments and
26 development plan petitions DURING which parties TO THE CASE shall have an opportunity to be heard. The
27 Zoning Board shall be prohibited from holding meetings which include an opportunity for public testimony
28 on any day on which Rosh Hashanah, Yom Kippur, Eid Ul Fitr or Eid Ul Adha is observed. The Zoning
29 Board shall not take final action on piecemeal map amendments or development plan petitions until after:

30 (1) [[the]] ANY public hearing; AND

1 (2) THE PROCEDURES IN THIS SECTION AND SECTION 16.203A OF THIS SUBTITLE ARE
2 COMPLETE.

3 (d) *Advertising.* At least 30 days prior to the initial public hearing on the piecemeal map amendment or
4 development plan petitions, the petitioner, at its own expense, shall advertise the date, time, place and
5 subject matter of the petition in at least two newspapers of general circulation in Howard County.

6 (e) *Posting and Mail Notice:*

7 (1) At least 30 days prior to the initial public hearing on the piecemeal map amendment or
8 development plan petitions, the petitioner shall:

9 (i) Post the property which is the subject of the hearing with the date, time, place and
10 subject matter of the hearing. The sign shall include the address of Department of Planning and Zoning's
11 website. The poster shall be double-sided and at least 30 inches by 36 inches in size. The poster shall include
12 a three digit alphanumeric code, which would be used to identify the case. The alphanumeric code shall be
13 posted by the Department of Planning and Zoning in at least five-inch lettering in the top left corner of the
14 poster. The Department of Planning and Zoning shall determine the number of posters required and their
15 location and the petitioner shall bear the expense of posting. The Department of Planning and Zoning shall
16 supply the posters. The petitioner shall properly erect and maintain the posters; and

17 (ii) Send a certified letter to all persons whose property is adjoining to the property which
18 is the subject of the petition, according to the most recent State taxation and assessment records, notifying
19 those persons of the date, time, place and subject matter of the hearing in accordance with subsection
20 16.203(c)(7) and of this subtitle.

21 (2) Noncompliance with the mailing requirements of paragraph (1) of this subsection does not
22 constitute a basis for appeal or the setting aside of piecemeal zoning or development plan decisions.

23 (f) *Report of the Planning Board.* Petitions for piecemeal map amendments or development plan
24 approvals shall be submitted to the Planning Board. At least 30 days prior to a Planning Board meeting on
25 any piecemeal map amendment or development plan, the petitioner shall send notice of such meeting to the
26 relevant subscribers on the list maintained by the Department of Planning and Zoning in accordance with
27 subsection 16.145(b)(3). The Zoning Board shall consider the report of the Planning Board on such petitions
28 before the Zoning Board takes final action on them.

29 (g) *Department of Planning and Zoning's Findings and Analysis.* The Department of Planning and
30 Zoning shall transmit its findings and analysis concerning a petition for piecemeal map amendments or

1 development plans in a technical staff report to the Planning Board at least two weeks prior to the PLANNING
2 BOARD [[public]] meeting on a petition.

3 (h) *Questioning Departmental Findings.* At any time any individual may submit a question to the staff
4 of the Department of Planning and Zoning or related agencies concerning the findings and analysis of the
5 Department or related agencies. If a written response is requested, the question should be submitted in
6 writing to the Department or agency. If the written request is submitted at least 30 days prior to the Zoning
7 Board hearing, the Department or agency shall respond to such requests in writing and send a copy of the
8 response to the Zoning Board at least two weeks prior to the Zoning Board hearing. A response from a
9 related agency to a question concerning its findings and analysis may be considered by the Zoning Board
10 only if the response is in writing, unless a representative of the agency is present at the hearing to answer
11 questions.

12 (i) *Presentation of Departmental Findings and Analysis.* At least 30 days prior to a Zoning Board hearing,
13 the Board Administrator shall send a written notice to the Director of the Department of Planning and
14 Zoning as to the date, time, and place of the hearing. The Director of the Department of Planning and
15 Zoning, or the Director's Designee, shall attend a Zoning Board public hearing concerning a petition for
16 piecemeal map amendment or development plan and, under oath and subject to cross-examination,
17 summarize the Department's findings, explain the development process, and answer any related questions.

18 (j) *Findings.* Before the Zoning Board makes a decision, on any piecemeal map amendment or
19 development plan petition it shall make those findings of fact and conclusions of law required by law.

20 (k) *Documentation.*

21 (1) A petition for a piecemeal amendment of the zoning map may include documentation
22 describing the proposed development and use of the property under petition. The zoning regulations and
23 Zoning Board's rules of procedure shall govern the nature of the documentation and its review.

24 (2) A piecemeal map amendment shall be based on findings required by law. A piecemeal map
25 amendment petition may not be granted solely on the basis of documentation relating to proposed
26 development and use of the property.

27 (3) If the petition for a piecemeal map amendment includes documentation describing the
28 proposed development and use of the property under petition and the petition is granted:

29 (i) The property may be developed and used only in accordance with the documentation,
30 notwithstanding any provision requiring uniformity of zoning requirements; and

1 (ii) Unless the comprehensive zoning plan changes the zoning district of the
2 property, subsequent adoption of a comprehensive zoning plan shall not affect the requirement that the
3 property be used in accordance with the documentation.

4 ***Section 2. Be it further enacted*** by the County Council of Howard County, Maryland, that this Act shall
5 *become effective 61 days after its enactment.*

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