

HOUSE BILL 1076

G2, L2

11r1905

By: **Montgomery County Delegation and Prince George's County Delegation**
Introduced and read first time: February 11, 2011
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Prince George's County – Development and Ethics Reform Act of 2011**

3 **MC/PG 117–11**

4 FOR the purpose of specifying that the ethics provisions required to be enacted by
5 Prince George's County shall contain certain provisions; prohibiting a lobbyist
6 who is regulated under the ethics provisions of Prince George's County from
7 engaging in lobbying activities for contingent compensation; prohibiting the
8 Prince George's County government from issuing a credit card to an elected
9 county official; prohibiting an elected county official from soliciting certain
10 persons to enter into a business relationship with, or to provide anything of
11 value to, certain other persons; requiring that the Prince George's County Board
12 of Ethics be composed of a certain number of members and have an executive
13 director; requiring the county to provide for an ethics advisor who shall perform
14 certain duties; establishing a Board of Planning and Zoning Appeals in the
15 county; providing for the membership, appointment, terms, and responsibilities
16 of the Board of Planning and Zoning Appeals; transferring certain powers and
17 responsibilities of the County Council of Prince George's County, sitting as a
18 district council, to the Board of Planning and Zoning Appeals; authorizing the
19 Board of Planning and Zoning Appeals to make certain decisions on certain
20 zoning map amendment and special exception applications; requiring a certain
21 vote for the approval of certain zoning map amendments and certain special
22 exceptions; authorizing the Board of Planning and Zoning Appeals to consider
23 and adopt certain requirements, safeguards, and conditions in approving
24 certain zoning map amendments; prohibiting the Board of Planning and Zoning
25 Appeals from imposing certain requirements, safeguards, or conditions;
26 authorizing appeal and judicial review of certain decisions; providing for the
27 construction of this Act; and generally relating to development and ethics
28 reform in Prince George's County.

29 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – State Government
 2 Section 15–807(d)
 3 Annotated Code of Maryland
 4 (2009 Replacement Volume and 2010 Supplement)

5 BY repealing and reenacting, without amendments,
 6 Article – State Government
 7 Section 15–808
 8 Annotated Code of Maryland
 9 (2009 Replacement Volume and 2010 Supplement)

10 BY adding to
 11 Article 28 – Maryland–National Capital Park and Planning Commission
 12 Section 8–103.1
 13 Annotated Code of Maryland
 14 (2010 Replacement Volume)

15 BY repealing and reenacting, with amendments,
 16 Article 28 – Maryland–National Capital Park and Planning Commission
 17 Section 8–104, 8–106, 8–109(a), 8–110, 8–110.1, 8–110.2, 8–111(b)(2), 8–121,
 18 8–122, 8–122.1(a), and 8–124
 19 Annotated Code of Maryland
 20 (2010 Replacement Volume)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – State Government**

24 15–807.

25 (d) (1) [In] THIS SUBSECTION APPLIES TO Prince George’s County[,
 26 “local].

27 (2) “LOCAL official” includes:

28 [(1)] (I) each member of the Board of License Commissioners;

29 [(2)] (II) the chief inspector and any other inspector of the Board of
 30 License Commissioners;

31 [(3)] (III) the administrator of the Board of License Commissioners;
 32 and

33 [(4)] (IV) the attorney to the Board of License Commissioners.

1 **(3) THE LOBBYING PROVISIONS REQUIRED UNDER § 15-803 OF**
2 **THIS SUBTITLE SHALL PROHIBIT A PERSON FROM BEING ENGAGED FOR**
3 **LOBBYING PURPOSES FOR COMPENSATION THAT IS DEPENDENT IN ANY**
4 **MANNER ON THE OUTCOME OF EXECUTIVE OR LEGISLATIVE ACTION BEFORE**
5 **THE COUNTY GOVERNMENT.**

6 **(4) THE CONFLICT-OF-INTEREST PROVISIONS REQUIRED UNDER**
7 **§ 15-803 OF THIS SUBTITLE:**

8 **(I) SHALL PROHIBIT THE COUNTY GOVERNMENT FROM**
9 **ISSUING A CREDIT CARD TO AN ELECTED COUNTY OFFICIAL; AND**

10 **(II) SHALL PROHIBIT AN ELECTED COUNTY OFFICIAL FROM**
11 **DIRECTLY OR INDIRECTLY SOLICITING A PERSON TO ENTER INTO A BUSINESS**
12 **RELATIONSHIP WITH OR PROVIDE ANYTHING OF VALUE TO A SPECIFIC**
13 **INDIVIDUAL OR ENTITY, IF THE PERSON BEING SOLICITED IS SEEKING:**

14 1. **THE SUCCESS OR DEFEAT OF COUNTY**
15 **LEGISLATION;**

16 2. **A COUNTY CONTRACT; OR**

17 3. **ANY OTHER COUNTY BENEFIT.**

18 **(5) THE COUNTY'S ETHICS ENACTMENTS SHALL PROVIDE FOR:**

19 **(I) A COUNTY BOARD OF ETHICS COMPOSED OF SEVEN**
20 **MEMBERS;**

21 **(II) A FULL-TIME EXECUTIVE DIRECTOR OF THE BOARD OF**
22 **ETHICS; AND**

23 **(III) AN ETHICS ADVISOR WHO:**

24 1. **SHALL MEET INDIVIDUALLY WITH EACH ELECTED**
25 **OFFICIAL OF THE COUNTY, AT LEAST ANNUALLY, TO ADVISE THE OFFICIAL**
26 **REGARDING THE REQUIREMENTS OF ANY APPLICABLE ETHICS LAW, RULE, OR**
27 **STANDARD OF CONDUCT;**

28 2. **SHALL ASSIST EACH ELECTED OFFICIAL OF THE**
29 **COUNTY IN PREPARING ANY AFFIDAVIT OR OTHER DOCUMENT REQUIRED TO BE**
30 **FILED UNDER THE COUNTY'S ETHICS ENACTMENTS;**

1 **3. SHALL CONDUCT ETHICS-RELATED BRIEFINGS**
2 **FOR THE BENEFIT OF ELECTED OFFICIALS OF THE COUNTY; AND**

3 **4. MAY PROVIDE INFORMATION TO ANY PERSON**
4 **REGARDING LAWS, RULES, AND OTHER STANDARDS OF ETHICAL CONDUCT**
5 **APPLICABLE TO ELECTED OFFICIALS OF THE COUNTY.**

6 15-808.

7 (a) If the Ethics Commission determines that a county or municipal
8 corporation has not complied with the requirements of this Part I, the Ethics
9 Commission may petition a circuit court with venue over the proceeding for
10 appropriate relief to compel compliance.

11 (b) The circuit court may grant any available equitable relief.

12 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
13 read as follows:

14 **Article 28 – Maryland–National Capital Park and Planning Commission**

15 **8-103.1.**

16 **(A) THERE IS A BOARD OF PLANNING AND ZONING APPEALS IN PRINCE**
17 **GEORGE’S COUNTY.**

18 **(B) THE BOARD CONSISTS OF FIVE MEMBERS, APPOINTED BY THE**
19 **COUNTY EXECUTIVE WITH THE ADVICE AND CONSENT OF THE COUNTY**
20 **COUNCIL.**

21 **(C) EACH MEMBER SHALL BE:**

22 **(1) A RESIDENT OF THE REGIONAL DISTRICT IN PRINCE**
23 **GEORGE’S COUNTY; AND**

24 **(2) A REGISTERED VOTER OF PRINCE GEORGE’S COUNTY.**

25 **(D) (1) THE TERM OF A MEMBER IS 5 YEARS AND BEGINS ON JUNE 1.**

26 **(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY**
27 **THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON JUNE 1, 2011.**

28 **(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE**
29 **UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.**

1 **(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN**
2 **SERVES FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED**
3 **AND QUALIFIES.**

4 **(5) A MEMBER WHOSE TERM HAS EXPIRED MAY BE REAPPOINTED**
5 **TO THE BOARD.**

6 **(6) A VACANCY ON THE BOARD DOES NOT IMPAIR THE RIGHT OF**
7 **THE REMAINING MEMBERS TO EXERCISE ALL OF THE POWERS OF THE BOARD.**

8 **(E) THE BOARD EACH YEAR SHALL ELECT A CHAIR AND A VICE CHAIR.**

9 **(F) (1) THE BOARD SHALL DETERMINE THE TIMES AND PLACES OF**
10 **ITS MEETINGS.**

11 **(2) THE BOARD SHALL ACT BY RESOLUTION, CONCURRED IN BY**
12 **AT LEAST THREE MEMBERS.**

13 **(3) THE BOARD SHALL ADOPT AND AMEND RULES OF**
14 **PROCEDURE CONSISTENT WITH THIS TITLE TO GOVERN THE ORGANIZATION**
15 **AND PROCEDURES OF THE BOARD.**

16 **(4) THE BOARD, THE CHAIR, OR ANY OTHER OFFICER OF THE**
17 **BOARD MAY ADMINISTER OATHS AND COMPEL THE ATTENDANCE OF**
18 **WITNESSES.**

19 **(5) THE BOARD SHALL KEEP MINUTES OF ITS PROCEEDINGS.**

20 **(G) THE COUNTY EXECUTIVE:**

21 **(1) SHALL DETERMINE THE COMPENSATION OF THE MEMBERS OF**
22 **THE BOARD; AND**

23 **(2) MAY PROVIDE STAFF FOR THE BOARD.**

24 8-104.

25 **(a) (1) [After] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
26 **SUBSECTION, AFTER** duly advertised public hearing each district council from time to
27 time may amend its regulations or any regulation, including the maps or any map, in
28 accordance with procedures established in the respective zoning ordinances. The
29 procedures and ordinances may include, but not be limited to: (i) procedures limiting
30 the times during which amendments may be adopted; (ii) provisions for hearings and
31 preliminary determinations by an examiner, board or other agency; (iii) procedures for

1 quorums, number of votes required to enact amendments and variations or increases
 2 therein based upon such factors as master plans, recommendations of the hearing
 3 examiner, planning board, municipality, or other body, and petitions of abutting
 4 property owners, and the evidentiary value which may be accorded to any or all of
 5 these; and (iv) procedures for hearing, notice, costs, and fees, amendment of
 6 applications, stenographic records, reverter, lapse, and reconsideration de novo of
 7 undeveloped zoning amendments. The existing provisions of the Regional District Law
 8 and of the ordinances enacted by the respective district councils relating to the
 9 foregoing matters shall remain in full force and effect unless or until specifically
 10 superseded or amended in accordance with the power and authority granted herein,
 11 but no such amendment may be made by a district council, in a year in which the
 12 council is elected, after the 31st day of October and until the newly elected council is
 13 duly qualified and has taken office.

14 (2) In Montgomery County all applications which seek a zoning
 15 classification, either euclidean or floating, other than that which is indicated to be
 16 appropriate or suitable in the text or on the land use map of an adopted master plan,
 17 approved by the district council, under the provisions of § 7–108(e) of this article, shall
 18 be granted only by the affirmative vote of 6 members of the district council. If the
 19 application for reclassification is recommended for approval by the Commission or if
 20 the application is for a zoning classification created after the approval of the master
 21 plan by the council, then an affirmative vote of 5 members of the district council is
 22 required to grant the application or applications. In all other cases, an application may
 23 not be granted except by affirmative vote of at least 5 members of the district council.

24 (3) (I) In Prince George's County [the district council shall require:

25 (i) A two-thirds vote of all members of the district council to
 26 approve a zoning map amendment if the zoning map amendment is contrary to an
 27 approved master plan;

28 (ii) A two-thirds vote of all members of the district council to
 29 approve a zoning map amendment or a special exception if the zoning map
 30 amendment or special exception is contrary to the recommendation of a municipal
 31 corporation that has any portion of the land subject to the zoning map amendment or
 32 special exception within the municipal boundaries; and

33 (iii) A two-thirds vote of all members of the district council and a
 34 four-fifths vote of all members of the planning board to approve an optional parking
 35 plan if the], **SUBJECT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH,**
 36 **THE BOARD OF PLANNING AND ZONING APPEALS SHALL HEAR AND DECIDE**
 37 **EACH APPLICATION FOR A LOCAL ZONING MAP AMENDMENT OR A SPECIAL**
 38 **EXCEPTION.**

39 (II) **A LOCAL ZONING MAP AMENDMENT THAT IS CONTRARY**
 40 **TO AN APPROVED MASTER PLAN OR CONTRARY TO THE RECOMMENDATION OF A**
 41 **MUNICIPAL CORPORATION THAT HAS ANY PORTION OF THE PROPERTY SUBJECT**

1 TO THE MAP AMENDMENT WITHIN THE MUNICIPAL BOUNDARIES MAY BE
2 APPROVED ONLY BY THE AFFIRMATIVE VOTE OF AT LEAST FOUR MEMBERS OF
3 THE BOARD OF PLANNING AND ZONING APPEALS.

4 (III) A SPECIAL EXCEPTION THAT IS CONTRARY TO THE
5 RECOMMENDATION OF A MUNICIPAL CORPORATION THAT HAS ANY PORTION OF
6 THE PROPERTY SUBJECT TO THE SPECIAL EXCEPTION WITHIN THE MUNICIPAL
7 BOUNDARIES MAY BE APPROVED ONLY BY THE AFFIRMATIVE VOTE OF AT LEAST
8 FOUR MEMBERS OF THE BOARD OF PLANNING AND ZONING APPEALS.

9 (IV) AN optional parking plan THAT is contrary to the
10 recommendation of a municipal corporation that has any portion of the land subject to
11 the optional parking plan within the municipal boundaries MAY BE APPROVED BY
12 THE AFFIRMATIVE VOTE OF AT LEAST TWO–THIRDS OF THE MEMBERS OF THE
13 DISTRICT COUNCIL AND AT LEAST FOUR–FIFTHS OF THE MEMBERS OF THE
14 PLANNING BOARD.

15 (b) Before any map amendment is passed it shall be submitted to the
16 appropriate planning board and to the governing body of the incorporated municipality
17 in which the land is located, for approval, disapproval, or suggestions.

18 Each district council may provide by ordinance procedures to be followed by the
19 planning boards and municipalities in considering zoning map amendments to the
20 extent that these provisions are not in conflict with the provisions of this article.

21 (c) (1) [Before] IN MONTGOMERY COUNTY, BEFORE the district council
22 [of the Maryland–Washington Regional District in Montgomery County and Prince
23 George’s County] may amend the zoning ordinance [of either county] by changing the
24 zoning classification of property within any incorporated municipality, the application
25 for the change shall be referred to the governing body of the incorporated municipality
26 for its recommendation, allowing the governing body 60 days in which to make its
27 recommendation. However, a two–thirds majority of all the members of the district
28 council is required before the council may change the zoning classification of property
29 within any incorporated municipality contrary to the recommendation of the
30 municipality. For purposes of this section the term “incorporated municipality”
31 includes any city, town, village, or special taxing area which has an elected local
32 governing body and performs general municipal functions.

33 (2) (I) IN PRINCE GEORGE’S COUNTY, IF ANY PORTION OF A
34 PROPERTY SUBJECT TO AN APPLICATION FOR A CHANGE IN ZONING
35 CLASSIFICATION LIES IN A MUNICIPAL CORPORATION, THE APPLICATION SHALL
36 BE REFERRED TO THE MUNICIPAL CORPORATION FOR ITS RECOMMENDATION.

1 **(II) THE MUNICIPAL CORPORATION SHALL MAKE ITS**
2 **RECOMMENDATION WITHIN 60 DAYS AFTER RECEIVING THE APPLICATION**
3 **REFERRAL.**

4 (d) (1) In this subsection, “custodian” means the custodian of the records
5 of a zoning map amendment case in Prince George’s County.

6 (2) **[Before] IN PRINCE GEORGE’S COUNTY, BEFORE** the
7 Commission sends a zoning map amendment case to the **[district council in Prince**
8 **George’s County] BOARD OF PLANNING AND ZONING APPEALS**, the Commission is
9 the custodian of the records of the case. After the Commission sends a zoning map
10 amendment case to the **[district council in Prince George’s County] BOARD OF**
11 **PLANNING AND ZONING APPEALS**, the **[district council] BOARD** is the custodian of
12 the records of the case.

13 (3) (i) Correspondence or documents submitted to a custodian shall
14 be received only in accordance with any applicable statute, ordinance, rule of evidence,
15 or case law.

16 (ii) All applications for zoning map amendments and all official
17 correspondence and records relating thereto, prepared or received by the custodian,
18 shall be made available to the public during regular business hours of the custodian,
19 but the custodian may publish rules to prevent this access from unreasonably
20 disrupting its official business. However, under any circumstances, copies of technical
21 staff reports shall be available at the office of the custodian for the public.

22 (4) (i) In Prince George’s County, a person who personally appears
23 at the office of the custodian may obtain, without charge, a copy of a public document
24 if the document:

25 1. Is of letter or legal size; and

26 2. Pertains to a specific zoning case, including zoning
27 applications and justification statements.

28 (ii) The purpose of subparagraph (i) is to supplement any
29 present laws, rules, or policies that the custodian follows when making public
30 documents available.

31 (e) (1) In **PRINCE GEORGE’S COUNTY, IN** approving any local map
32 amendment **[after July 1, 1968,]** under this section, the **[district council for Prince**
33 **George’s County] BOARD OF PLANNING AND ZONING APPEALS** may give
34 consideration to and adopt whatever reasonable requirements, safeguards, and
35 conditions as may in its opinion be necessary either to protect surrounding properties
36 from adverse effects which might accrue from the zoning amendment, or which would
37 further enhance the coordinated, harmonious, and systematic development of the
38 regional district. A statement of these conditions shall be included in the resolution

1 granting the amendment and shall become a part thereof, and remain in effect for so
2 long as the property remains zoned in accordance with the resolution and the
3 applicable zoning classification requested. No building permit, use permit, or
4 subdivision plat may be issued or approved for the property except in accordance with
5 conditions set forth in the resolution. The district council **AND THE BOARD** may adopt
6 ordinances, **RULES**, and regulations necessary to provide adequate notice, public
7 hearings, and enforcement procedures for the implementation of this section.

8 (2) An applicant has 90 days from date of approval to accept or reject
9 the land use classification conditionally approved. Should the applicant expressly
10 reject the amendment as conditionally approved within the 90-day period, the zoning
11 classification shall revert to its prior status.

12 (3) Notwithstanding any other provision of this article no
13 requirements, safeguards or conditions may be imposed by the [district council]
14 **BOARD OF PLANNING AND ZONING APPEALS** which would require the dedication of
15 land for public use except for roads, streets, alleys, and easements.

16 (4) If any resolution, or any part or condition thereof, passed by the
17 [district council] **BOARD OF PLANNING AND ZONING APPEALS** pursuant to this
18 subsection is declared illegal, unconstitutional, or in any way invalid by any court of
19 competent jurisdiction, the zoning category applicable to the property rezoned by the
20 resolution shall revert back to the category applicable prior to the passage of the
21 resolution, and the resolution shall be null and void and of no effect whatsoever.

22 (f) In Prince George's County, municipal corporations, as defined in Article
23 23A, § 9(a), shall have concurrent authority within their boundaries with the
24 Department of Inspections and Permits of Prince George's County to seek compliance
25 with zoning requirements insofar as these requirements pertain to signs. Such
26 municipalities may also enact legislation regulating fences erected in front of the
27 building setback lines on all residential property located within the municipality.
28 Enacted ordinances may not be less restrictive than any ordinance in effect or
29 thereafter enacted by the County Council of Prince George's County.

30 8-106.

31 (a) In Prince George's County there shall be a stenographic record made by a
32 duly authorized and competent stenographer or reporter of all hearings on petitions
33 for zoning map amendments as provided herein. The stenographic record made may
34 not be destroyed until the time for appeal or rehearing on any petition for zoning map
35 amendments has expired.

36 (b) The person, corporation, or party making application for a zoning map
37 amendment at the time of paying the advertising costs shall pay an additional filing
38 fee of \$5. Any person, corporation, or party noting an appeal from [the] A decision of
39 the [district council] **BOARD OF PLANNING AND ZONING APPEALS**, or who or which

1 for any reason requests a transcript to be transcribed as herein provided, shall pay to
2 the county the cost [of] **OR** estimated costs of transcribing the stenographic record.

3 (c) [Each] **THE** district council **AND THE BOARD OF PLANNING AND**
4 **ZONING APPEALS** may include in [its] **THEIR RESPECTIVE** regulations provisions for
5 additional notice of the public hearing on any proposal for amendment of [its] **THE**
6 zoning plan or regulations, to be given to the owners (as they appear on the
7 assessment rolls of the county) of properties adjoining or across the road from, or in
8 the same block as, or in the general vicinity of, the properties involved in the proposed
9 amendment. The notice may be given by mail or by posting of the notice on or in the
10 vicinity of the properties involved in the proposal, or both.

11 (d) For purposes of this section and §§ 8–104 and 8–105 of this article herein,
12 the word “amend” or “amendment” shall be deemed to include any modification of the
13 text or phraseology of a regulation or of any provision of the regulations, or any repeal
14 or elimination of any regulation or part thereof, or any addition to the regulations, or
15 any new regulation, or any change in the number, shape, boundary, or area of the
16 districts, or of any district, or any repeal or abolition of any map or part thereof, or any
17 addition to any map, or any new map, or any other change in the map or maps. For the
18 purpose of this and other sections of this title the words “regulate”, “regulation”, or
19 “regulations” shall be deemed to include “restrict”, “restrictions”, “limit”, “limitations”,
20 “prohibit” and “prohibitions”.

21 (e) In Prince George’s County, any incorporated municipality located in
22 Prince George’s County, any person or taxpayer in Prince George’s County, any civic or
23 homeowners association representing property owners affected by a final [district
24 council] decision **OF THE BOARD OF PLANNING AND ZONING APPEALS OR THE**
25 **DISTRICT COUNCIL**, and, if aggrieved, the applicant may have judicial review of any
26 final decision of the **BOARD OR THE** district council. Proceedings for review shall be
27 instituted by filing a petition in the Circuit Court of Prince George’s County within 30
28 days after service of the final decision [of the district council], which may be served
29 upon all persons of record [at the district council’s hearing]. Copies of the petition
30 shall be served on the **BOARD OR THE** district council and all other persons of record
31 in the manner provided by the rules of court. The filing of the petition does not stay
32 enforcement of the [district council’s] decision **OF THE BOARD OR THE DISTRICT**
33 **COUNCIL**; but the **BOARD OR THE** district council may do so, or the reviewing court
34 may order a stay upon terms it deems proper.

35 (f) Within 30 days [of] **AFTER** service of a petition or within whatever
36 further time as the court may allow, the **BOARD OF PLANNING AND ZONING**
37 **APPEALS OR THE** district council shall transmit to the reviewing court the original or
38 a certified copy of the entire record of proceeding under review. By stipulation of all
39 parties to the review proceeding, the record may be shortened. Any party
40 unreasonably refusing to stipulate to limit the record may be taxed by the court for the
41 additional cost. The court may require or permit subsequent corrections to the record
42 when deemed advisable.

1 (g) If written application by petition to show cause is made to the court
2 before the date set for hearing for leave to present additional evidence on the issues in
3 the case either by the party appealing or any party in interest, and if it is shown to the
4 satisfaction of the court after a hearing thereon that the additional evidence is
5 material and that there were good reasons for failure to present it in the proceedings
6 before the **BOARD OF PLANNING AND ZONING APPEALS OR THE** district council, the
7 court shall order that the additional evidence be taken before the **BOARD OR THE**
8 district council upon conditions which the court deems proper, and the case shall be
9 forthwith remanded [to the district council] for the taking of additional testimony. In
10 cases in which the additional evidence is taken before the **BOARD OR THE** district
11 council, the **BOARD OR THE** district council may modify or reverse its previous
12 findings and decision by reason of the additional evidence and shall file with the
13 reviewing court, to become part of the record, the additional evidence together with
14 any modifications or new findings or decision.

15 (h) The review shall be conducted by the court without a jury. In cases of
16 alleged irregularities in procedure before the **BOARD OF PLANNING AND ZONING**
17 **APPEALS OR THE** district council not shown in the record, testimony thereon may be
18 taken in the court. The court upon request shall hear oral argument and receive
19 written briefs.

20 (i) The court may affirm the decision of the **BOARD OF PLANNING AND**
21 **ZONING APPEALS OR THE** district council or remand the case for further proceedings;
22 or it may reverse or modify the decision if the substantial rights of the petitioners have
23 been prejudiced because the administrative findings, inferences, conclusions, or
24 decisions are (1) in violation of constitutional provisions; or (2) in excess of the
25 statutory authority or jurisdiction of the agency; or (3) made upon unlawful procedure;
26 or (4) affected by other error of law; or (5) unsupported by competent, material and
27 substantial evidence in view of the entire record as submitted; or (6) arbitrary or
28 capricious.

29 (j) In Prince George's County, the **BOARD OF PLANNING AND ZONING**
30 **APPEALS, THE** district council, the applicant, or any party to the circuit court review
31 who is an aggrieved party may secure a review of any final judgment of the Prince
32 George's County Circuit Court under this title by appeal to the Court of Special
33 Appeals. The appeal shall be taken in the manner provided by law for appeals from
34 law courts in other civil cases. Each member of the district council in Prince George's
35 County is entitled to vote on whether the district council shall appeal to the Court of
36 Special Appeals, regardless of whether the member participated in the hearing on the
37 matter or in the decision.

38 (k) This section applies only in that portion of the regional district that lies
39 within Prince George's County.

1 (a) No clerk of the Circuit Court of Montgomery County or of Prince George's
2 County, no administrative official, no licensing body or board, and no person whatever
3 may issue a license or permit for any commercial or industrial purpose or for the
4 conducting of any commercial or industrial enterprise or business whatsoever in a
5 residential zone, that is, in any district designated on the zone maps as residential
6 within the regional district, unless the purpose, enterprise, or business is allowed by
7 the applicable zoning ordinance under permitted uses or special exceptions granted by
8 the board of appeals **IN MONTGOMERY COUNTY OR THE BOARD OF PLANNING**
9 **AND ZONING APPEALS IN PRINCE GEORGE'S COUNTY.**

10 8-110.

11 (a) (1) A district council in either county, in its zoning regulations, may
12 provide that the board of zoning appeals, **THE BOARD OF PLANNING AND ZONING**
13 **APPEALS**, the district council, or an administrative office or agency designated by the
14 district council, in appropriate cases and subject to appropriate principles, standards,
15 rules, conditions, and safeguards set forth in the regulations, may either grant or
16 deny, upon conditions as may be deemed necessary to carry out the purposes of this
17 article, special exceptions and variances to the provisions of the zoning regulations in
18 harmony with their general purposes and intent.

19 (2) (i) In Montgomery County, the district council in its zoning
20 regulations may provide that the affirmative vote of:

21 1. At least four members of the board of appeals are
22 required to adopt a resolution that grants, revokes, suspends, amends, extends the
23 time in which to implement, or modifies a special exception; and

24 2. A majority of the board of appeals is required to adopt
25 a procedural motion regarding a special exception application.

26 (ii) In exercising its authority under this paragraph, the district
27 council may enact, for any zone, different voting requirements for different uses.

28 (3) **(I)** In Prince George's County [the district council shall provide
29 for the appeal of decisions], **SUBJECT TO SUBPARAGRAPH (II) OF THIS**
30 **PARAGRAPH, FINAL DECISIONS** of the zoning hearing examiner in special exception
31 and variance cases **MAY BE APPEALED** to the [district council. However, if] **BOARD**
32 **OF PLANNING AND ZONING APPEALS.**

33 **(II)** **IF** a special exception is contrary to the recommendation of a
34 municipal corporation that has any portion of the property subject to the special
35 exception within the municipal boundaries, the [district council shall require a
36 two-thirds vote of all district council members] **AFFIRMATIVE VOTE OF AT LEAST**
37 **FOUR BOARD MEMBERS IS REQUIRED** to approve the special exception.

1 (4) The decisions of the administrative office or agency in Montgomery
2 County shall be subject to an appeal to either the board of appeals or other
3 administrative body as may be designated by the district council.

4 (5) In either county, the appeal shall follow that procedure which may
5 from time to time be determined by the district council.

6 ~~(5)~~ (6) The district council in either county also may authorize the
7 board of zoning appeals to interpret the zoning maps or pass upon disputed questions
8 of lot lines or district boundary lines or similar questions as they arise in the
9 administration of the regulations.

10 (b) In Montgomery County, notwithstanding any provision in Article 25A, §
11 5(U), of the Annotated Code to the contrary, a decision by the county board of appeals
12 on applications for zoning variations or exceptions may be appealed within 30 days by
13 any person, municipality, corporation, or association, whether or not incorporated,
14 which has appeared at the hearing in person, by attorney, or in writing, to the circuit
15 court for the county, which may affirm or reverse the decision appealed from or
16 remand it to the board for further consideration for any reason, or dismiss the appeal
17 as provided by law. Any party to the proceedings in the circuit court may appeal from
18 such decision to the Court of Special Appeals. The review proceedings provided by this
19 section are exclusive.

20 (c) (1) In Prince George's County, prior to any hearing by a zoning
21 hearing examiner [and the district council] **OR THE BOARD OF PLANNING AND**
22 **ZONING APPEALS** concerning a request for a special exception for the mining of sand
23 or gravel, a report shall be prepared in accordance with this subsection.

24 (2) Any report required under paragraph (1) of this subsection shall:

25 (i) Be prepared by the Commission;

26 (ii) Comprehensively evaluate the request by analyzing the
27 impact of the proposed mining activities on the surrounding area, considering only the
28 following factors:

29 1. Noise;

30 2. Watershed and water quality;

31 3. Airshed and air quality;

32 4. Traffic and traffic safety; and

33 5. Any other environmental factors relating to the
34 health, safety, and welfare of the residents in the affected area; and

1 (iii) Be paid for by the applicant through a fee for the services
2 performed by the Commission, not to exceed \$8,000, in addition to the initial filing fee.

3 8-110.1.

4 [The District Council of] **IN** Prince George's County, **THE BOARD OF**
5 **PLANNING AND ZONING APPEALS** may not approve a special exception to construct
6 or operate a rubble landfill at a site, if an application for a special exception to
7 construct or operate a rubble landfill at the site was previously denied on or after
8 October 1, 1981.

9 8-110.2.

10 [The District Council of] **IN** Prince George's County, **THE BOARD OF**
11 **PLANNING AND ZONING APPEALS** may not approve a special exception to construct
12 or operate a rubble landfill at a site without [a three-fourths majority vote of the
13 District Council] **THE AFFIRMATIVE VOTE OF AT LEAST FOUR MEMBERS OF THE**
14 **BOARD.**

15 8-111.

16 (b) Upon appeals, the board of zoning appeals has the following powers:

17 (2) To hear and decide, in accordance with the provisions of the
18 regulations enacted by the district council, requests for [special exceptions or] map
19 interpretations or for decisions upon permits for extensions, substitutions,
20 restorations, reinstatements, or reconstructions of lawful nonconforming uses or other
21 special questions upon which the board of zoning appeals is required or authorized by
22 the zoning regulations to pass.

23 8-121.

24 In Prince George's County, the record of every hearing on a map amendment or
25 special exception shall recite the vote or abstention from voting of each member of the
26 [district council] **BOARD OF PLANNING AND ZONING APPEALS**, stated separately, or
27 the fact that the member was absent.

28 8-122.

29 In Prince George's County, all witnesses appearing in a hearing before the
30 **BOARD OF PLANNING AND ZONING APPEALS OR THE** district council are subject to
31 cross-examination. However, the district council may establish reasonable rules and
32 procedures governing both the cross-examination and the administering of oaths to
33 witnesses appearing to testify [at district council hearings], after first conducting a
34 public hearing on the rules and procedures.

35 8-122.1.

1 (a) Notwithstanding any other provision of the Code, the district council for
2 Prince George's County may authorize in its rules and procedures the representation
3 before the Prince George's County planning board, the district council, **THE BOARD**
4 **OF PLANNING AND ZONING APPEALS**, the zoning hearing examiner, or the board of
5 zoning appeals, of any bona fide civic association or homeowner's association by any
6 duly elected officer of the association regardless of whether that individual is an
7 attorney.

8 8-124.

9 In Prince George's County, if the [district council] **BOARD OF PLANNING AND**
10 **ZONING APPEALS** disapproves, in whole or in part, an application for a map
11 amendment, it may not entertain a subsequent application respecting the same land
12 or any portion thereof within 18 months from the date of the first disapproval, and 24
13 months from the date of the second or further disapproval. As used in this section,
14 date of disapproval means the date upon which the [district council] **BOARD**
15 announces its decision, or, in the event of appellate review, the date upon which the
16 Circuit Court announces its decision. In any subsequent application respecting the
17 same land or any portion thereof, for the same zoning classification or the same special
18 exception purpose, by the same applicant or applicants, the [district council] **BOARD**
19 may not base its findings solely upon any fact or circumstance which was presented at
20 the earlier hearing.

21 SECTION 3. AND BE IT FURTHER ENACTED, That the terms of the initial
22 members of the Board of Planning and Zoning Appeals in Prince George's County shall
23 expire as follows:

- 24 (1) one member in 2013;
- 25 (2) one member in 2014;
- 26 (3) one member in 2015;
- 27 (4) one member in 2016; and
- 28 (5) one member in 2017.

29 SECTION 4. AND BE IT FURTHER ENACTED, That the powers and authority
30 conferred on the Board of Planning and Zoning Appeals by Article 28, §§ 8-104, 8-106,
31 and 8-110 of the Code, as enacted by Section 2 of this Act, may not be construed to be
32 in derogation of any powers now existing in the Board of Zoning Appeals for Prince
33 George's County.

34 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 June 1, 2011.

