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COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

SITTING AS THE DISTRICT COUNCIL

Legislative Session

1992

Bill No. _____ CB-11-

1992

Chapter No.

7

Proposed and Presented by Council Member Del
Giudice

Introduced by Council Member Del
Giudice

Co-Sponsors

Date of Introduction March 17,
1992

ZONING BILL

AN ORDINANCE concerning

Office of the Zoning Hearing Examiner

FOR the purpose of ensuring that Examiners have the authority to deny receipt or receive appropriate new evidence after a case has been recessed, continued, taken under advisement or remanded based on generally accepted legal standards.

BY repealing and reenacting with amendments:

Section 27-129,
 The Zoning Ordinance of Prince George's County, Maryland,
 being also
 SUBTITLE 27. ZONING.
 The Prince George's County Code
 (1991 Edition).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, sitting as the District Council for that part of the Maryland-Washington Regional District in Prince George's County, Maryland, that Section 27-129 of the Zoning Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's County Code, be and the same is hereby repealed and reenacted with the following amendments:

SUBTITLE 27. ZONING.

PART 3. ADMINISTRATION.

DIVISION 1. GENERAL ZONING PROCEDURES.

Subdivision 1. General.

Sec. 27-129. Hearing procedures.

(a) **Limitation of time**

(1) The time for presenting cases by parties shall generally be limited to one (1) hour for each side. For good cause, the Examiner may grant additional time.

(b) **Order of presentation**

(1) The order of presenting zoning cases shall be as

follows:

- (A) Applicant's case;
- (B) Opposition's case;
- (C) Rebuttal by applicant;
- (D) Surrebuttal by opposition;
- (E) Public agency comments and examination;
- (F) Summation by opposition;
- (G) Summation by applicant.

(2) In all cases (including cases remanded by the District Council), the order of presentation may be modified by the Examiner as the nature of the case warrants.

(c) Participation of Examiners

(1) The Examiner shall rule upon procedural matters, questions of law, evidence, motions, or objections, and may limit debate. He may ask questions of any witness.

(d) Witnesses

(1) All persons who appear to testify in a zoning case shall be sworn. Reasonable cross-examination of witnesses shall be permitted.

(2) All subpoenas shall be served in the manner provided by the Maryland Rules of Civil Procedure for service in the Circuit Courts of this State. No person shall disobey or fail to answer the subpoena. A witness may be excused from attendance if he can show that his placement under subpoena was frivolous or oppressive.

(e) Transcripts

(1) A complete transcript containing all record testimony (including exhibits by reference) shall be prepared in each zoning case, except for those Special Exceptions which may be finally decided by the Zoning Hearing Examiner. A transcript shall be prepared in these cases when an appeal or a request for oral argument is filed, or where the District Council elects to make the final decision.

(f) Referral for additional information

(1) Cases may be referred to any agency which has processed or commented on an application, for the purpose of clarifying, updating, or completing the record.

(g) Correspondence and communications

(1) All correspondence received and copies of correspondence sent by public agencies processing applications shall be included in the record. The substance of any oral communication held with a public agency processing applications, regarding the merits of a pending zoning case, shall be reduced to writing and included in the record of that case.

(h) Persons of record

(1) The Zoning Hearing Examiner shall prepare a list of persons of record, which shall be made a part of the record.

(i) Testimony for less intense zones

(1) The Zoning Hearing Examiner may take testimony for a less intense zone if either:

(A) The zone has been recommended by the

Planning Board;

(B) The Planning Board has not made a recommendation and the zone has been recommended by the Technical Staff; or

(C) The application has been remanded pursuant to Sections 27-157(d), 27-176(e), 27-195(e), or 27-213(d).

(j) **Continued and recessed cases**

(1) [The Examiner may (for good cause) continue the hearing date after the case has been advertised. He may recess a case in order to take additional testimony. Unless otherwise stated at the time of recess, no additional evidence shall be admitted into the record during a recess. If no date is set for a continued or recessed case at the hearing, when a new hearing is finally set, all parties of record shall be notified (in writing) of the new date at least twenty (20) days prior to it.] The Examiner may continue or recess a case.

(A) A case may be continued for good cause after it has been advertised for hearing.

(B) After hearing has begun, a case may be recessed for the receipt of additional evidence and upon such conditions or limitations or subject to such additional requirements or hearings as due process may require.

(C) If no new hearing date is set for a continued or recessed case at the time of continuance or recess, all parties of record shall be sent written notice at least twenty (20) days prior to the new hearing date.

(D) The Planning Board may request (in writing) that the record be held open for not more than fourteen (14) days for the receipt of its recommendation on any given case.

(k) Case taken under advisement

(1) Once a case has been fully presented, it shall be taken under advisement for the Examiner to render a decision. Thereafter, no new evidence may be entered into the record except:

(A) If good cause [it] is shown why [(for good cause) it] the evidence was not previously presented into the record; or

(B) [If, after the case is remanded by the District Council, it is shown that the additional evidence is material and that there was good cause for not submitting it before closing the hearing.] The evidence is presented pursuant to a remand of the District Council; and

(C) All persons of record have been afforded the opportunity to present evidence in rebuttal.

(D) Notwithstanding the above subsections (A) through (C), the hearing examiner may deny admission of additional evidence upon a finding that its probative value is outweighed by any cumulative effect, undue prejudice or delay in the proceedings.

SECTION 2. BE IT FURTHER ENACTED that this Ordinance shall take effect on June 30, 1992.

Adopted this 21st day of April, 1992.

OF
COUNTY,

GEORGE'S

COUNTY COUNCIL OF PRINCE
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART

THE MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S

MARYLAND

BY:

Richard J. Castaldi
Chairman

ATTEST:

Joyce T. Sweeney
Acting Clerk of the Council

KEY:

Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.