

Division 59-G-1. Special Exceptions - Authority and Procedure.**

[Note]

Sec. 59-G-1.1. Authority to hear and decide petitions.

59-G-1.11. Board of appeals.

The Board of Appeals may grant petitions for special exceptions as authorized in section 59-A-4.11.

59-G-1.12. Hearing examiner.

(a) In addition to the authorization given to the Board of Appeals to hear and decide petitions for special exceptions under Section 59-A-4.11, the Hearing Examiner may hear and decide petitions for special exceptions for the following uses:

- (1) Boardinghouses for 3 guests or fewer, in the R-30, R-20 and R-10 zones.
- (2) Home occupations in the R-30, R-20 or R-10 zones.
- (3) Noncommercial riding stable for not more than 2 horses, for personal or family use, in the RE-2 zone.
- (4) Temporary structures, in residential zones.
- (5) Renewals of temporary special exceptions originally granted by the board, director or hearing examiner for boardinghouses, and home occupations.
- (6) Farm Tenant mobile homes, for more than one but less than 4; provided such farm tenant mobile homes meet the definition established for such uses by this chapter and that such uses are not within 200 feet of a non-farm residence.
- (7) Child day care facilities for up to 30 children.

All decisions and actions of the Hearing Examiner under this Section are subject to Sections 59-G-1.2 through 59-G-2.62.

(b) Petitions for special exceptions filed under this section are subject to section 59-A-4.4 as if they were filed with the Board. The County Council must set the filing fee for each petition filed with the Hearing Examiner to reasonably cover the cost of processing the petition.

(c) The Hearing Examiner must hold a public hearing before making a decision regarding any petition for special exception filed. Notice of the public hearing and of the subsequent decision must be provided in accordance with the notice, posting and advertising requirements in section 59-A-4.46. The public hearing on any such petition must be held not sooner than 30

days following the date of mailing of such notice. It is not necessary to make a verbatim record of a hearing before the Hearing Examiner.

(d) The Hearing Examiner may continue a hearing as provided in section 59-A-4.46.

(e) The decision of the Hearing Examiner must be based on the evidence presented at the hearing. The decision must be in writing and must contain a statement of the grounds and the findings on which it is based.

(f) A petition for special exception is subject to the same limits on refiling for the same property as provided in section 59-A-4.123 for cases filed with the Board.

(g) Any person, board, association, corporation or official aggrieved by a decision of the Hearing Examiner under this section may, within 10 days after the decision is rendered, appeal the decision to the County Board of Appeals, which must review the decision as an administrative appeal based on the record compiled by the Hearing Examiner. The Board may hear oral argument on the record. The oral argument, if granted, must not take place sooner than 30 days after the notice of filing of the appeal is mailed under Section 59-A-4.46. The Hearing Examiner must comply with the prehearing submission requirements of Chapter 2A. The Board, after considering the evidence of record, may affirm, reverse, or modify the Hearing Examiner's decision or remand the matter for further proceedings.

59-G-1.13. Reserved.

*Editor's note - Former § 59-G-1.13, District Council was repealed by Ord. No. 15-18, § 1

(Legislative History: Ord. No. 8-61, § 6; Ord. No. 8-81, § 17; Ord. No. 9-55, § 1; Ord. No. 9-82, § 1; Ord. No. 10-9, § 2; Ord. No. 10-85, § 6; Ord. No. 11-41, § 12; Ord. No. 11-91, § 5; Ord. No. 12-4, § 4; Ord. No. 12-14, § 1; Ord. No. 12-26, § 1; Ord. No. 12-55, § 1; Ord. No. 12-81, § 3; Ord. No. 13-11, § 1; Ord. No. 13-14, § 6; Ord. No. 13-14, § 6; Ord. No. 13-38, § 3; Ord. No. 13-85, §3; Ord. No. 14-47, § 1; Ord. No. 15-18, § 1.)

Editor's note-Prior to its amendment by § 6 of Ord. No. 10-85, the first paragraph of § 59-G-1.13 referred to § 59-G-1.2 as well as § 59-G-1.3 and div. 59-G-2. The amendment omitted this reference but did not specifically delete reference to § 59-G-1.2 through the use of brackets or struck-through type. The above Section is cited in Cowles v. Montgomery County, 123 Md. App. 426, 718 A.2d 678 (1998).

Sec. 59-G-1.2. Conditions for granting.

59-G-1.2.1. Standard for evaluation.

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless

of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

59-G-1.21. General conditions.

(a) A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

(4) Will be in harmony with the general character of the neighborhood, considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.

(8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(9) Will be served by adequate public services and facilities, including schools, police

and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.

(B) If the special exception:

(i) does not require approval of a new preliminary plan of subdivision; and

(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

(b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

(c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

59-G-1.22. Additional requirements.

(a) The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

(b) Using guidance by the Planning Board, the Board, the Hearing Examiner, or the District Council, as the case may be, may require a special exception to comply with Division 59-D-3 if:

(1) The property is in a zone requiring site plan approval, or

(2) The property is not in a zone requiring site plan approval, but the Planning Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant

factors.

59-G-1.23. General development standards.

(a) **Development Standards.** Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

(b) **Parking requirements.** Special exceptions are subject to all relevant requirements of Article 59-E.

(c) **Minimum frontage.** In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:

(1) Rifle, pistol and skeet-shooting range, outdoor.

(2) Sand, gravel or clay pits, rock or stone quarries.

(3) Sawmill.

(4) Cemetery, animal.

(5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.

(6) Equestrian facility.

(7) Heliport and helistop.

(d) **Forest conservation.** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

(e) **Water quality plan.** If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

(f) **Signs.** The display of a sign must comply with Article 59-F.

(g) **Building compatibility in residential zones.** Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and

must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

(h) **Lighting in residential zones.** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

59-G-1.24. Neighborhood need.

In addition to the findings and requirements of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

- (1) Automobile filling station.
- (2) Automobile and light trailer rental lot, outdoor.
- (3) Automobile, truck and trailer rental lot, outdoor.
- (4) Automobile sales and service center.
- (5) Swimming pool, community.
- (6) Swimming pool, commercial.

59-G-1.25. County need.

In addition to the findings of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:

- (1) Eating and drinking establishments—Drive-in restaurant.
- (2) Funeral parlors and undertaking establishment.
- (3) Hotel, motel or inn.

- (4) Rifle, pistol and skeet shooting range, outdoor.
- (5) Sanitary fill, incinerator, or private solid waste transfer station.
- (6) Public use heliport/helistop.
- (7) Conference center with lodging.

59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

59-G-1.27. Applications pending and not approved on or before May 6, 2002.

Any application for a special exception or modification of a special exception filed and not approved on or before May 6, 2002 must be decided based on the law in effect after May 6, 2002. At the request of the applicant, the application must be decided based on the law in effect when the application was filed.

(Legislative History: Ord. No. 8-61, §§ 8, 9; Ord. No. 9-14, § 1; Ord. No. 10-39, § 10; Ord. No. 10-80, §1; Ord. No. 11-16, § 3; Ord. No. 11-40, § 5; Ord. No. 11-50, § 25; Ord. No. 11-72, § 11; Ord. No. 11-91, § 5; Ord. No. 12-15, § 1; Ord. No. 12-81, § 3; Ord. No. 12-84, § 3; Ord. No. 13-14, § 6; Ord. No. 13-18, § 3; Ord. No. 13-14, § 6; Ord. No. 13-47, § 12; Ord. No. 13-76, §1; Ord. No. 14-11, § 2; Ord. No. 14-47, § 1; Ord. No. 14-53, § 1; [15-21](#), § 5; Ord. No. [16-14](#), § 1; [Ord. No. 17-01](#), § 2.)

Editor's note—Section 59-G-1.21 is quoted in Mills v. Godlove, 200 Md. App. 213, 26 A.3d 1034 (2011). Section 59-G-1.21 is cited and interpreted in Montgomery County v. Butler, 417 Md. 271, 9 A.3d 824 (2010), where the Court upheld Council's authority to enact the provisions. Section 59-G-1.21 is cited in Purich v. Draper Properties, Inc., 395 Md. 694, 912 A.2d 598 (2006). Section 59-G-1.25 is cited in Concerned Citizens of Great Falls v. Constellation-Potomac, 122 Md. App. 700, 716 A.2d 353 (1998) and in Cowles v. Montgomery County, 123 Md. App. 426, 718 A.2d 678 (1998). Section 59-G-1.2 [formerly § 111-35] is quoted in Gerachis v. Montgomery County Board of Appeals, 261 Md. 153, 274 A.2d 379 (1971); and in Tauber v. County Board of Appeals for Montgomery County, 257 Md. 202, 262 A.2d 513 (1970). In B. P. Oil, Inc. v. County Board of Appeals for Montgomery County, 42 Md. App. 576, 401 A.2d 1054 (1979), the court sustained the County's denial of a special exception for a filling station. The constitutionality of paragraph (f) of section 59-124 (the predecessor section to the above section) was upheld in Lucky Stores, Inc. v. Board of Appeals of Montgomery County, 270 Md. 513, 312 A.2d 758 (1973). In American Oil Company v. Board of Appeals of Montgomery County, 270 Md. 301, 310 A.2d 796 (1973) the court affirmed the denial of a special exception for a gasoline station, ruling that Amoco had not demonstrated a present need by the neighborhood population for the station. In Luxmanor Citizens Assoc., Inc. v. Burkhart, 266 Md. 631, 296 A.2d 403 (1972), the court affirmed the

granting of a special exception for a medical or dental clinic. In the City of Takoma Park v. County Board of Appeals for Montgomery County, 259 Md. 619, 270 A.2d 772 (1970) it was held that a woman and her 2 children living in a man's home and helping him (sometimes) in his trade of making slip covers are a part of the man's family within the meaning of the home occupation exception. The special exception was granted for an R60 zone. In Eger v. Stone, 253 Md. 533, 253 A.2d 372 (1969) the court ruled that hearsay evidence was sufficient evidence upon which to base the granting a special exception. Section 59-G-1.2 [formerly §59-123] is cited in Redden v. Montgomery County, 270 Md. 668, 313 A.2d 481 (1974). The predecessor to the above section is cited in Springloch Area Citizens Group v. Montgomery County Board of Appeals, 252 Md. 717, 251 A.2d 357 (1969). Section 59-G-1.2 [formerly §§104-22 through 104-29] is cited in Town of Somerset v. Montgomery County Board of Appeals, 245 Md. 52, 225 A.2d 294 (1966). Section 59-G-1.2 [formerly §104-29] is cited in Stacy v. Montgomery County, 239 Md. 189, 210 A.2d 540 (1965). Section 59-G-1.2 [formerly §104-27] is cited in Bryniarski v. Montgomery County Board of Appeals, 247 Md. 137, 230 A.2d 289 (1967). Section 59-G-1.2 [formerly §§104-27 and 107-28] is described in Montgomery County v. Mossburg, 228 Md. 555, 180 A.2d 851 (1962). Section 59-G-1.21 is quoted in Mossburg v. Montgomery County, 107 Md.App. 1, 666 A.2d 1253 (1995); and is cited in Rockville Crushed Stone, Inc. V. Montgomery County, 78 Md.App. 176, 552 A.2d 960 (1989) and Pierce v. Montgomery County, 116 Md.App. 522, 698 A.2d 1127 (1997).

Section 5 of Ord. No. 11-91 added § 59-G-1.25(9), thus duplicating paragraph numbers. The editor has redesignated former (9) as (10).

See County Attorney Opinion dated [10/28/1997](#) indicating that a family burial site is not an accessory use to an agricultural use, but may be nonconforming in some instances.

Sec. 59-G-1.3. Compliance with special exception grant.

(a) **Inspection of operations.** The Department, in conjunction with the Board, must establish a regular inspection program for special exception uses. All special exception uses must be inspected annually; except that the Board and the Department may specifically agree that a particular special exception use or category of uses requires a more frequent or less frequent schedule of inspections. The Department must inspect all special exceptions as scheduled in the inspection program.

(1) If the inspection shows that the operation of the special exception does not comply with all terms and conditions of its grant, the Department must direct the special exception holder to correct the violation within a time certain. The special exception holder must be granted at least 15 days to correct each violation. This Section does not prohibit the Department from ordering the special exception holder to correct the violation in less than 15 days where an emergency poses an immediate threat to the public health, safety, welfare, or convenience, or delay in correcting the violation would impose unusual individual or community hardship.

When the time to correct the violation has expired, the Department must reinspect the premises to determine whether the violation has been corrected.

(2) Within 30 days after any inspection required by this section, the Department must

file with the Board written findings which indicate any noncompliance with any term or condition of the special exception use.

(3) If the Department finds that no violations exist, the written findings must state that the special exception complies with the terms and conditions of the special exception grant. However, if the Department finds that the operation of the special exception does not comply with the terms and conditions of its grant, the written findings must describe the nature of the violation, the corrective action ordered by the Department, and the time allowed to correct the violations.

(4) Within 30 days after any reinspection required by this subsection, if the Department finds that the noted violations have been corrected, it must file written findings with the Board. If, however, violations continue to exist, the Department must notify the Board of its findings; the Department may recommend modification of the terms and conditions of the special exception, or propose appropriate remedial action. Upon receipt of the Department's findings and recommendations, the Board must take action as provided in this section.

(b) **Complaints.** A complaint alleging failure to comply with the terms or conditions of a special exception grant may be filed with the Department or Board by any person or government agency. The Department may also initiate a complaint.

(1) The complaint must be in writing and must state the name and address of the complainant, the name and address of the special exception holder, if known, the name and address of the premises and describe the nature of the alleged violation.

(2) Within 21 days after receipt of a complaint, or more promptly if requested by the Board, the Department must inspect the premises of the subject special exception to determine the validity of the complaint. If the inspection reveals that there exists a violation of the terms and/or conditions of the special exception grant, the Department must direct the special exception holder to correct the violation within a time certain; provided, that the special exception holder is granted at least 15 days in which to correct such violation; provided further, that nothing herein prohibits the Department from ordering the special exception holder to correct the violation in less than 15 days if an emergency poses an immediate threat to the public health, safety, welfare or convenience, or delay in correcting the violation would impose unusual individual or community hardship. When the time to correct the violation expires, the Department must reinspect the premises to determine whether the violation has been corrected.

(3) Within 14 days after any inspection provided for in this section, or more promptly if requested by the Board, the Department must forward to the Board written findings which must state the nature of the complaint and the results of the inspection and provide a description of the corrective action ordered; the department may recommend modification of the terms and/or conditions of the special exception and/or propose remedial action as deemed appropriate under the circumstances.

(4) Upon receipt of the Department's findings and recommendations, the Board may dismiss the complaint if the Department report indicates that such complaint is without merit, or the Board may initiate action as provided for in this section. The complainant must be notified by the Board of the action taken.

(c) **Modification.** The Board may amend or modify the terms or conditions of a special

exception on request of the special exception holder or recommendation of the Department, or after a show cause hearing held under subsection (e).

(1) If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition. However, if the matter involves an accessory apartment, the Board must not act until 10 days after the posting of the property with a special exception for accessory apartment sign under Section 59-A-4.43. The sign must remain posted until at least 15 days after the mailing of the Board's resolution. The affirmative vote of at least 4 members of the Board is required to modify the terms or conditions.

A copy of the Board's resolution must be transmitted to the petitioner, the Planning Commission, the Department, the Department of Finance, all parties entitled to notice at the time of the original filing, and current adjoining and confronting property owners. The resolution must state that any party may, within 15 days after the Board's resolution is mailed, request a public hearing on the Board's action. The request must be in writing, and must specify the reasons for the request and the nature of the objections or relief desired. If a request for a hearing is received, the Board must suspend its decision and conduct a public hearing to consider the action taken.

(2) If the proposed modification substantially alters the nature, character, intensity of use or the conditions of the original grant, the Board must convene a public hearing to consider the proposed modification. The Board must notify the special exception holder that, except as otherwise provided in this section, such request for modification is subject to the requirements set forth in Sections 59-A-4.2 and 59-A-4.4. The Board must receive and process petitions for modification of a special exception in accordance with the provisions of those sections.

(3) Petitions for modification of the terms or conditions of a special exception must be scheduled for hearing as promptly as possible, provided that hearings on petitions for modifications of a special exception must be held not less than 30 days following the date of public notice. Nothing herein prohibits the Board from convening a hearing within a shorter period of time if the Board determines by the vote of at least 3 members that an emergency exists which poses an immediate threat to the public health, safety, convenience, welfare or necessity, or that delay would impose unusual individual or community hardship.

(4) The public hearing must be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those proposals, and (2) as limited by paragraph (a) below, the underlying special exception, if the modification proposes an expansion of the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less.

(A) After the close of the record of the proceedings, the Board must make a determination on the issues presented. The Board may reaffirm, amend, add to, delete or modify the existing terms and/or conditions of the special exception. The Board may require the underlying special exception to be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if (1) the proposed modification expands the total floor area of all structures or buildings by more than

25%, or 7,500 square feet, whichever is less, and (2) the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

Decisions of the Board to amend or modify the terms or conditions of a special exception must be by the affirmative vote of at least 4 members as indicated by the adoption of a written resolution reflecting its decision, opinion and order.

(d) **Abandonment.** For the purposes of this section, “abandoned” and “property owner” are defined as follows:

(i) **Abandoned.** The cessation of use of the special exception or the cessation of activity necessary to the operation of the special exception use for a period of at least 6 months' duration;

(ii) **Property owner.** Any person or persons who, as of the date of the Board's notice, is recorded in the record of assessments of real property maintained by the Montgomery County Department of Finance as the party chargeable for the payment of taxes on any assessment upon the property.

(1) If, after making an inspection of a property governed by special exception, the Department finds that the special exception use as granted has been abandoned, it must forward written notice of its findings to the last recorded holder of the special exception and to the property owner, advising of the Department's finding and directing that they forward to the Department, within 60 days from the date of mailing of the notice, a written statement confirming the Department's finding that the special exception has been abandoned or challenging said finding and requesting that said special exception be continued.

(2) If the Department receives a written response from the special exception holder and the property owner acknowledges that the special exception has been abandoned, the Department must notify the Board of its findings, and the Board, upon receipt of such notice, must adopt and issue a written resolution finding the special exception to have been abandoned and ordering the special exception revoked.

(3) If within the provided 60-day period, the Department receives a written statement from either the special exception holder or the property owner challenging the Department's findings and requesting that the special exception be continued, the Department must notify the Board, and the Board must convene a public hearing, in accordance with the provisions of subsection (e) of this section, to determine whether or not the special exception was abandoned and whether or not the special exception should be revoked.

(4) If after 60 days from the date of mailing of the Department's notice, the Department has received no response from either the special exception holder or the property owner, the Department must notify the Board of its findings, and the Board must issue to the special exception holder and the property owner an order to appear before the Board to show cause why the special exception should not be revoked.

(5) If neither the special exception holder nor the property owner appears before the Board to show cause why the special exception should not be revoked, the Board must adopt

and issue a resolution finding the special exception to have been abandoned and ordering the special exception revoked.

(6) The show cause proceedings are subject to the provisions of subsection (e) of this section.

(7) Written notice of the proposed show cause hearing must be issued to the special exception holder, the property owner and to the Department. Written notice may also be sent, at the discretion of the Board, to those parties entitled to receive notice of the original petition for the special exception and to other interested persons, organizations or agencies.

(8) Any notice mailed to a special exception holder or to a property owner, pursuant to any provision of this section, must be by certified mail, return receipt requested.

(e) **Show cause hearing for revocation of a special exception.** If, under this Article, the Board receives a written notice from the Department that the terms or conditions of a special exception grant or that the terms, conditions or restrictions attached to the grant of any permit issued under this Article are not being complied with, the Board, by an affirmative vote of at least 3 members, may order the special exception holder and the property owner to appear before the Board at a date, time, and place specified to show cause why the special exception should not be revoked.

(1) The notice of a show cause hearing must be issued to the special exception holder, the property owner, the Department and to all parties who have submitted written complaints concerning the special exception. Written notice may also be sent, at the discretion of the Board, to those parties entitled to receive notice of the original petition for the special exception and to other interested persons, organizations or agencies.

(2) The notice of show cause hearing must contain the name of the special exception holder, the location and zoning classification, the case number, the telephone number, office address and business hours of the Board and the date, time and place fixed for the hearing.

(3) The notice of show cause hearing must state in detail the nature of the complaints received concerning the operation of the special exception and/or the nature of the alleged violations reported by the Department, and must state that the hearing is limited to a consideration and a determination of the validity of the allegations. The notice must further advise the special exception holder and the property owner that failure to attend and participate in the hearing may result in issuance of an order revoking the special exception.

(4) The Board must give such matters priority on its docket and must schedule show cause hearings as promptly as possible; provided, that such hearing must be held not less than 30 days following the date on which the notice was mailed. Nothing herein prohibits the Board from convening a hearing within a shorter period of time if the Board determines by the vote of at least 3 members that an emergency exists which poses an immediate threat to the public health, safety, convenience, welfare or necessity, or that delay would impose unusual individual or community hardship.

(5) The show cause hearing is be limited to consideration of the issues noted in the order and notice of hearing.

(6) Within 15 days after the close of the record of the proceedings, the Board must make a determination on the issues presented. The Board, by the affirmative vote of at least 4 members, may reaffirm or revoke the special exception, or amend, add to, delete or modify the existing terms or conditions of the special exception. The decision of the Board must be by the adoption of a written resolution. If necessary, the Board may adopt a resolution extending the time in which to issue its decision.

(7) A copy of the Board's decision must be transmitted to the special exception holder, the property owner, the Department, the Planning Commission, the Department of Finance, the County Attorney, and all parties who participated in or received notice of the show cause hearing.

(8) Any notice mailed to a special exception holder or property owner pursuant to any provision of this section must be by certified mail, return receipt requested.

(9) Revocation by the Board of any special exception must be so noted in the official zoning maps of the Department and the Planning Commission.

(f) **Hearing Examiner and District Council.** For those special exceptions which are issued under the authority specified in Sections 59-G-1.12 and 59-G-1.13, the Hearing Examiner and the District Council may conduct all proceedings authorized under subparagraphs (c), (d), and (e) of this section relating to modification, abandonment, or show cause hearing for revocation of a special exception.

(g) **Review on Transfer of Land Ownership.** The terms and conditions of a special exception may be reviewed by the Board, Hearing Examiner, or District Council, as the case may be, for good cause shown, upon a transfer of land ownership to determine the effectiveness of the conditions placed on the use and for new conditions to be established, if determined necessary. A review on a transfer of land ownership may take place at the request of the Department of Permitting Services, any aggrieved person, or at the initiative of the Board of Appeals, only upon a showing of substantial evidence that the terms and conditions of the original grant are ineffective for preventing adverse effects. Parties entitled to notice must be notified of the review and a public hearing held on reasonable notice. If, after the public hearing, it is determined that the terms and conditions of the special grant are not effective or the special exception is or will be operated in a manner previously unanticipated, new conditions may be established to address the adverse effects on nearby properties and the general neighborhood. It is the responsibility of the special exception holder to notify the Board of Appeals of any change in land ownership or change in circumstances or conditions affecting the special exception.

(Legislative History: Ord. No. 8-61, §§ 8, 9; Ord. No. 9-14, § 1; Ord. No. 10-39, § 10; Ord. No. 10-80, §1; Ord. No. 11-13, § 1; Ord. No. 12-54, § 1; Ord. No. 13-35, § 1; Ord. No. 13-112, § 1; Ord. No. 14-11, § 2; Ord. No. 14-36, § 1; Ord. No. 14-47, § 1; Ord. No. 14-49, § 1.)

Editor's note—Section 59-G-1.3 is cited and quoted in Purich v. Draper Properties, Inc., 395 Md. 694, 912 A.2d 598 (2006). Section 59-G-1.3 was cited in Ehlers-Renzi v. Connelly School of the Holy Child, Inc., 224 F.3d 283 (4th Cir. 2000). Section 59-G-1.3(c) is quoted and interpreted in Pierce v. Montgomery County, 116 Md. App. 522, 698 A.2d 1127 (1997).

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