

Bill No.: _____
Requested: _____
Committee: _____

Drafted by: Volk
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Stored – 02/10/11
Proofread by _____
Checked by _____

By: **Prince George’s County Delegation**

A BILL ENTITLED

1 AN ACT concerning

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

3 **PG 424–11**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 exceptions; authorizing the Board of Planning and Zoning Appeals to consider
2 and adopt certain requirements, safeguards, and conditions in approving
3 certain zoning map amendments; prohibiting the Board of Planning and Zoning
4 Appeals from imposing certain requirements, safeguards, or conditions;
5 authorizing appeal and judicial review of certain decisions; providing for the
6 construction of this Act; and generally relating to development and ethics
7 reform in Prince George’s County.

8 BY repealing and reenacting, with amendments,
9 Article – State Government
10 Section 15–807(d)
11 Annotated Code of Maryland
12 (2009 Replacement Volume and 2010 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article – State Government
15 Section 15–808
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2010 Supplement)

18 BY adding to
19 Article 28 – Maryland–National Capital Park and Planning Commission
20 Section 8–103.1
21 Annotated Code of Maryland
22 (2010 Replacement Volume)

23 BY repealing and reenacting, with amendments,
24 Article 28 – Maryland–National Capital Park and Planning Commission
25 Section 8–104, 8–106, 8–109(a), 8–110, 8–110.1, 8–110.2, 8–111(b)(2), 8–121,
26 8–122, 8–122.1(a), and 8–124
27 Annotated Code of Maryland
28 (2010 Replacement Volume)

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

31 **Article – State Government**

1 15-807.

2 (d) (1) [In] THIS SUBSECTION APPLIES TO Prince George's County[,
3 "local].

4 (2) "LOCAL official" includes:

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

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

8 [(3)] (III) the administrator of the Board of License Commissioners;
9 and

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

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

16 (4) THE CONFLICT-OF-INTEREST PROVISIONS REQUIRED UNDER
17 § 15-803 OF THIS SUBTITLE:

18 (I) SHALL PROHIBIT THE COUNTY GOVERNMENT FROM
19 ISSUING A CREDIT CARD TO AN ELECTED COUNTY OFFICIAL; AND

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

24 1. THE SUCCESS OR DEFEAT OF COUNTY
25 LEGISLATION;

26 2. A COUNTY CONTRACT; OR

1 **3. ANY OTHER COUNTY BENEFIT.**

2 **(5) THE COUNTY’S ETHICS ENACTMENTS SHALL PROVIDE FOR:**

3 **(I) A COUNTY BOARD OF ETHICS COMPOSED OF SEVEN**
4 **MEMBERS;**

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

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

8 **1. SHALL MEET INDIVIDUALLY WITH EACH ELECTED**
9 **OFFICIAL OF THE COUNTY, AT LEAST ANNUALLY, TO ADVISE THE OFFICIAL**
10 **REGARDING THE REQUIREMENTS OF ANY APPLICABLE ETHICS LAW, RULE, OR**
11 **STANDARD OF CONDUCT;**

12 **2. SHALL ASSIST EACH ELECTED OFFICIAL OF THE**
13 **COUNTY IN PREPARING ANY AFFIDAVIT OR OTHER DOCUMENT REQUIRED TO BE**
14 **FILED UNDER THE COUNTY’S ETHICS ENACTMENTS;**

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

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

20 15-808.

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

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

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

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

4 **8–103.1.**

5 (A) THERE IS A BOARD OF PLANNING AND ZONING APPEALS IN PRINCE
6 GEORGE’S COUNTY.

7 (B) THE BOARD CONSISTS OF FIVE MEMBERS, APPOINTED BY THE
8 COUNTY EXECUTIVE WITH THE ADVICE AND CONSENT OF THE COUNTY
9 COUNCIL.

10 (C) EACH MEMBER SHALL BE:

11 (1) A RESIDENT OF THE REGIONAL DISTRICT IN PRINCE
12 GEORGE’S COUNTY; AND

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

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

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

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

19 (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN
20 SERVES FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED
21 AND QUALIFIES.

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

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

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

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

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

6 **(3) THE BOARD SHALL ADOPT AND AMEND RULES OF**
7 **PROCEDURE CONSISTENT WITH THIS TITLE TO GOVERN THE ORGANIZATION**
8 **AND PROCEDURES OF THE BOARD.**

9 **(4) THE BOARD, THE CHAIR, OR ANY OTHER OFFICER OF THE**
10 **BOARD MAY ADMINISTER OATHS AND COMPEL THE ATTENDANCE OF**
11 **WITNESSES.**

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

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

14 **(1) SHALL DETERMINE THE COMPENSATION OF THE MEMBERS OF**
15 **THE BOARD; AND**

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

17 8-104.

18 (a) (1) **[After] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
19 **SUBSECTION, AFTER** duly advertised public hearing each district council from time to
20 time may amend its regulations or any regulation, including the maps or any map, in
21 accordance with procedures established in the respective zoning ordinances. The
22 procedures and ordinances may include, but not be limited to: (i) procedures limiting
23 the times during which amendments may be adopted; (ii) provisions for hearings and
24 preliminary determinations by an examiner, board or other agency; (iii) procedures for
25 quorums, number of votes required to enact amendments and variations or increases
26 therein based upon such factors as master plans, recommendations of the hearing
27 examiner, planning board, municipality, or other body, and petitions of abutting

1 property owners, and the evidentiary value which may be accorded to any or all of
 2 these; and (iv) procedures for hearing, notice, costs, and fees, amendment of
 3 applications, stenographic records, reverter, lapse, and reconsideration de novo of
 4 undeveloped zoning amendments. The existing provisions of the Regional District Law
 5 and of the ordinances enacted by the respective district councils relating to the
 6 foregoing matters shall remain in full force and effect unless or until specifically
 7 superseded or amended in accordance with the power and authority granted herein,
 8 but no such amendment may be made by a district council, in a year in which the
 9 council is elected, after the 31st day of October and until the newly elected council is
 10 duly qualified and has taken office.

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

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

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

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

30 (iii) A two-thirds vote of all members of the district council and a
 31 four-fifths vote of all members of the planning board to approve an optional parking
 32 plan if the], **SUBJECT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH,**
 33 **THE BOARD OF PLANNING AND ZONING APPEALS SHALL HEAR AND DECIDE**

1 EACH APPLICATION FOR A LOCAL ZONING MAP AMENDMENT OR A SPECIAL
2 EXCEPTION.

3 (II) A LOCAL ZONING MAP AMENDMENT THAT IS CONTRARY
4 TO AN APPROVED MASTER PLAN OR CONTRARY TO THE RECOMMENDATION OF A
5 MUNICIPAL CORPORATION THAT HAS ANY PORTION OF THE PROPERTY SUBJECT
6 TO THE MAP AMENDMENT WITHIN THE MUNICIPAL BOUNDARIES MAY BE
7 APPROVED ONLY BY THE AFFIRMATIVE VOTE OF AT LEAST FOUR MEMBERS OF
8 THE BOARD OF PLANNING AND ZONING APPEALS.

9 (III) A SPECIAL EXCEPTION THAT IS CONTRARY TO THE
10 RECOMMENDATION OF A MUNICIPAL CORPORATION THAT HAS ANY PORTION OF
11 THE PROPERTY SUBJECT TO THE SPECIAL EXCEPTION WITHIN THE MUNICIPAL
12 BOUNDARIES MAY BE APPROVED ONLY BY THE AFFIRMATIVE VOTE OF AT LEAST
13 FOUR MEMBERS OF THE BOARD OF PLANNING AND ZONING APPEALS.

14 (IV) AN optional parking plan THAT is contrary to the
15 recommendation of a municipal corporation that has any portion of the land subject to
16 the optional parking plan within the municipal boundaries MAY BE APPROVED BY
17 THE AFFIRMATIVE VOTE OF AT LEAST TWO-THIRDS OF THE MEMBERS OF THE
18 DISTRICT COUNCIL AND AT LEAST FOUR-FIFTHS OF THE MEMBERS OF THE
19 PLANNING BOARD.

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

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

26 (c) (1) [Before] IN MONTGOMERY COUNTY, BEFORE the district council
27 [of the Maryland–Washington Regional District in Montgomery County and Prince
28 George’s County] may amend the zoning ordinance [of either county] by changing the
29 zoning classification of property within any incorporated municipality, the application
30 for the change shall be referred to the governing body of the incorporated municipality
31 for its recommendation, allowing the governing body 60 days in which to make its
32 recommendation. However, a two-thirds majority of all the members of the district

1 council is required before the council may change the zoning classification of property
2 within any incorporated municipality contrary to the recommendation of the
3 municipality. For purposes of this section the term “incorporated municipality”
4 includes any city, town, village, or special taxing area which has an elected local
5 governing body and performs general municipal functions.

6 **(2) (I) IN PRINCE GEORGE’S COUNTY, IF ANY PORTION OF A**
7 **PROPERTY SUBJECT TO AN APPLICATION FOR A CHANGE IN ZONING**
8 **CLASSIFICATION LIES IN A MUNICIPAL CORPORATION, THE APPLICATION SHALL**
9 **BE REFERRED TO THE MUNICIPAL CORPORATION FOR ITS RECOMMENDATION.**

10 **(II) THE MUNICIPAL CORPORATION SHALL MAKE ITS**
11 **RECOMMENDATION WITHIN 60 DAYS AFTER RECEIVING THE APPLICATION**
12 **REFERRAL.**

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

15 (2) [Before] **IN PRINCE GEORGE’S COUNTY, BEFORE** the
16 Commission sends a zoning map amendment case to the [district council in Prince
17 George’s County] **BOARD OF PLANNING AND ZONING APPEALS**, the Commission is
18 the custodian of the records of the case. After the Commission sends a zoning map
19 amendment case to the [district council in Prince George’s County] **BOARD OF**
20 **PLANNING AND ZONING APPEALS**, the [district council] **BOARD** is the custodian of
21 the records of the case.

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

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

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

4 1. Is of letter or legal size; and

5 2. Pertains to a specific zoning case, including zoning
6 applications and justification statements.

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

10 (e) (1) In **PRINCE GEORGE’S COUNTY, IN** approving any local map
11 amendment [after July 1, 1968,] under this section, the [district council for Prince
12 George’s County] **BOARD OF PLANNING AND ZONING APPEALS** may give
13 consideration to and adopt whatever reasonable requirements, safeguards, and
14 conditions as may in its opinion be necessary either to protect surrounding properties
15 from adverse effects which might accrue from the zoning amendment, or which would
16 further enhance the coordinated, harmonious, and systematic development of the
17 regional district. A statement of these conditions shall be included in the resolution
18 granting the amendment and shall become a part thereof, and remain in effect for so
19 long as the property remains zoned in accordance with the resolution and the
20 applicable zoning classification requested. No building permit, use permit, or
21 subdivision plat may be issued or approved for the property except in accordance with
22 conditions set forth in the resolution. The district council **AND THE BOARD** may adopt
23 ordinances, **RULES**, and regulations necessary to provide adequate notice, public
24 hearings, and enforcement procedures for the implementation of this section.

25 (2) An applicant has 90 days from date of approval to accept or reject
26 the land use classification conditionally approved. Should the applicant expressly
27 reject the amendment as conditionally approved within the 90–day period, the zoning
28 classification shall revert to its prior status.

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

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

7 (f) In Prince George's County, municipal corporations, as defined in Article
8 23A, § 9(a), shall have concurrent authority within their boundaries with the
9 Department of Inspections and Permits of Prince George's County to seek compliance
10 with zoning requirements insofar as these requirements pertain to signs. Such
11 municipalities may also enact legislation regulating fences erected in front of the
12 building setback lines on all residential property located within the municipality.
13 Enacted ordinances may not be less restrictive than any ordinance in effect or
14 thereafter enacted by the County Council of Prince George's County.

15 8–106.

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

21 (b) The person, corporation, or party making application for a zoning map
22 amendment at the time of paying the advertising costs shall pay an additional filing
23 fee of \$5. Any person, corporation, or party noting an appeal from **[the] A** decision of
24 the **[district council] BOARD OF PLANNING AND ZONING APPEALS**, or who or which
25 for any reason requests a transcript to be transcribed as herein provided, shall pay to
26 the county the cost **[of] OR** estimated costs of transcribing the stenographic record.

27 (c) **[Each] THE** district council **AND THE BOARD OF PLANNING AND**
28 **ZONING APPEALS** may include in **[its] THEIR RESPECTIVE** regulations provisions for
29 additional notice of the public hearing on any proposal for amendment of **[its] THE**
30 zoning plan or regulations, to be given to the owners (as they appear on the
31 assessment rolls of the county) of properties adjoining or across the road from, or in
32 the same block as, or in the general vicinity of, the properties involved in the proposed

1 amendment. The notice may be given by mail or by posting of the notice on or in the
2 vicinity of the properties involved in the proposal, or both.

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

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

27 (f) Within 30 days [of] **AFTER** service of a petition or within whatever
28 further time as the court may allow, the **BOARD OF PLANNING AND ZONING**
29 **APPEALS OR THE** district council shall transmit to the reviewing court the original or
30 a certified copy of the entire record of proceeding under review. By stipulation of all
31 parties to the review proceeding, the record may be shortened. Any party
32 unreasonably refusing to stipulate to limit the record may be taxed by the court for the
33 additional cost. The court may require or permit subsequent corrections to the record
34 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

1 Special Appeals, regardless of whether the member participated in the hearing on the
2 matter or in the decision.

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

5 8–109.

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

15 8–110.

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

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

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

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

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

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

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

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

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

18 **[(5)] (6)** The district council in either county also may authorize the
19 board of zoning appeals to interpret the zoning maps or pass upon disputed questions
20 of lot lines or district boundary lines or similar questions as they arise in the
21 administration of the regulations.

22 (b) In Montgomery County, notwithstanding any provision in Article 25A, §
23 5(U), of the Annotated Code to the contrary, a decision by the county board of appeals
24 on applications for zoning variations or exceptions may be appealed within 30 days by
25 any person, municipality, corporation, or association, whether or not incorporated,
26 which has appeared at the hearing in person, by attorney, or in writing, to the circuit
27 court for the county, which may affirm or reverse the decision appealed from or
28 remand it to the board for further consideration for any reason, or dismiss the appeal
29 as provided by law. Any party to the proceedings in the circuit court may appeal from
30 such decision to the Court of Special Appeals. The review proceedings provided by this
31 section are exclusive.

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

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

6 (i) Be prepared by the Commission;

7 (ii) Comprehensively evaluate the request by analyzing the
8 impact of the proposed mining activities on the surrounding area, considering only the
9 following factors:

10 1. Noise;

11 2. Watershed and water quality;

12 3. Airshed and air quality;

13 4. Traffic and traffic safety; and

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

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

18 8-110.1.

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

24 8-110.2.

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

6 8–111.

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

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

14 8–121.

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

19 8–122.

20 In Prince George’s County, all witnesses appearing in a hearing before the
21 **BOARD OF PLANNING AND ZONING APPEALS OR THE** district council are subject to
22 cross-examination. However, the district council may establish reasonable rules and
23 procedures governing both the cross-examination and the administering of oaths to
24 witnesses appearing to testify [at district council hearings], after first conducting a
25 public hearing on the rules and procedures.

26 8–122.1.

27 (a) Notwithstanding any other provision of the Code, the district council for
28 Prince George’s County may authorize in its rules and procedures the representation
29 before the Prince George’s County planning board, the district council, **THE BOARD**

1 **OF PLANNING AND ZONING APPEALS**, the zoning hearing examiner, or the board of
2 zoning appeals, of any bona fide civic association or homeowner's association by any
3 duly elected officer of the association regardless of whether that individual is an
4 attorney.

5 8–124.

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

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

- 21 (1) one member in 2013;
- 22 (2) one member in 2014;
- 23 (3) one member in 2015;
- 24 (4) one member in 2016; and
- 25 (5) one member in 2017.

26 **SECTION 4. AND BE IT FURTHER ENACTED**, That the powers and authority
27 conferred on the Board of Planning and Zoning Appeals by Article 28, §§ 8–104, 8–106,
28 and 8–110 of the Code, as enacted by Section 2 of this Act, may not be construed to be

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1 in derogation of any powers now existing in the Board of Zoning Appeals for Prince
2 George's County.

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