

## Public Participation in a Special Exception hearing

*Note: The schedule for Special Exceptions and other cases before the Zoning Hearing Examiner is at <http://md-harfordcounty.civicplus.com/calendar.aspx?CID=82>*

A Special Exception (SE) is a request for approval for a use which exceeds that allowed by the permitted zoning of a specific Site Plan on a specific property. A public hearing is held to give the affected community a chance to voice their reasoning for their opposition or support. The case focuses on the Site Plan itself as well as its potential impacts to properties and uses nearby. Most of the Special Exception cases are for minor requests such as exceeding permitted lot line distances so the applicant can better place amenities such as porches, decks, fences, etc. After all the testimony, a written decision will be made (by the Hearing Examiner) to:

- disapprove the entire request
- approve the proposed Site Plan exactly as requested
- approve the Site Plan, but require changes be made and/or certain conditions be met in order to address public concerns

The process begins with a property owner/developer filing a Special Exception request with the County. The Department of Planning & Zoning reviews the request first to determine if it is consistent with what is allowed in the Zoning Code Special Exception regulations. The request is reviewed by the Peoples' Counsel Citizens Advisory Board, a group of citizens appointed by County Council members. They can recommend that the Peoples' Counsel enter the case as a lawyer to protect the principles of the Zoning Code usually defending the neighbors' protests against the requested use. Individual citizens can ask the Peoples' Counsel to take a case. The decision to enter a case is entirely at the discretion of the Peoples' Counsel. The Peoples' Counsel is a lawyer hired by the County Council specifically to represent the rights of the public and uphold the interpretation of the Zoning Code in a fair and equitable manner.

The matter is handled like a court case, complete with a judge (the Hearing Examiner), the Peoples' Counsel if entered in the case, a lawyer if one has been retained (supporting the SE request), a court recorder (prepares word-for-word transcripts), sworn testimony from witnesses and experts, cross examinations in cases of major impact, etc. The Hearing Examiner may request that the lawyers submit in writing "briefs" to further describe case law and precedents of other zoning decisions which may aid in deciding a fair ruling. *Although this may sound intimidating, you do have a real opportunity to impact whether or not that Special Exception is granted, changed, or denied -- so **go to the public hearing and speak up.***

There are only certain things the Hearing Examiner will consider in making his decision. Per Zoning Code section 267-9I, a SE is not supposed to be approved if " the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood, Natural Resource District, Chesapeake Bay Critical Area or is protected by a permanent easement."

Section 267-9(I) goes on to say that The Board may impose conditions or limitations on any

approval, including the posting of performance guaranties, with regard to any of the following

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians and cyclists, such as sidewalks and parking facilities; the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the County.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive features and opportunities for recreation and open space.
- (10) The preservation of cultural and Historic Landmarks.

These ten concerns should also be considered when pointing out why the SE should not be approved at all. For example, a common concern is traffic safety. If it can be shown that the additional traffic impacts pose a threat to public safety that cannot be successfully mitigated, the SE should be disapproved.

Consider whether the SE project will be worse at *this* location than if it was elsewhere (on a property with the same zoning). If so, then this can be pointed out as a reason to disapprove the SE.

If either party is dissatisfied with the decision of the Hearing Examiner, they can appeal it to the County Council (acting as the Zoning Board of Appeals) by filing within 20 days of the Hearing Examiner's decision. Only the information, testimony and site plans used during the case may be used as evidence in the Board of Appeals hearing. Lawyers if used in the case or individuals in the case testify as to their case before the Board of Appeals prior to the normal County Council meeting. The Council is given the transcript prior to the appeal and may ask questions based on the transcript contents to either protestant or applicant. If there is no appeal the Hearing Examiner's decision stands. The next step would be a formal appeal through the Maryland court system. The Maryland Court of Appeals rules only on the legality of the interpretation of the Hearing Examiner and the Board of Appeals rulings as it pertains to the Zoning Code regulations.