

Resolution No.: 18-1276
Introduced: October 16, 2018
Adopted: October 30, 2018

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President Riemer at the Request of the Hearing Examiner

SUBJECT: Rules of Procedure for Agency Referral and Accessory Apartment Cases Heard by the Office of Zoning and Administrative Hearings (OZAH)

Background

1. The Office of Zoning and Administrative Hearings (OZAH) conducts hearings in cases referred by various County agencies for hearings in matters that do not involve zoning. These include referrals from the Commission on Human Rights, the Commission on Common Ownership Communities, the Office of the Chief Administrative Officer, the Merit System Protection Board, and the Board of Registration. OZAH's existing Rules govern only land use matters, and somewhat different procedures apply to non-land use cases. While the Montgomery County Administrative Procedures Act, County Code Section 2A-1 et seq., sets broad parameters governing such hearings, those provisions often do not fully address the particulars of OZAH's hearing practice, and they usually must be supplemented by a detailed Procedures Order issued by the assigned Hearing Examiner. The newly-proposed Rules of Procedure for Agency Referral and Accessory Apartment Cases Heard by the Office of Zoning and Administrative Hearings would remedy that deficiency.
2. The need for these new Rules is even more pronounced in the cases OZAH receives for a hearing relating to accessory apartment license applications. The Council's approval on October 9, 2018 of Zoning Text Amendment 18-07 (Ord. No. 18-53, eff. 10/29/18) and Bill No. 26-18 (eff. 1/9/19, if signed) converted OZAH role in reviewing accessory apartment conditional use applications into reviewing requests for waivers from parking and separation requirements for accessory apartments, in addition to its existing function of reviewing objections to the findings of the Director of the Department of Housing and Community Affairs with regard to accessory apartment license applications. There are currently no OZAH rules that address those proceedings, and the statutory time periods between filing and hearing (30 days) do not necessarily give the parties time to review and comply with a new Procedures Order issued by the Hearing Examiner when the case is filed.
3. The County Council finds that the Office of Zoning and Administrative Hearings' proposed Rules of Procedure for Agency Referral and Accessory Apartment Cases Heard by the Office

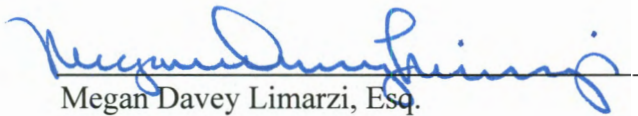
of Zoning and Administrative Hearings (OZAH) will effectively implement the new Zoning Text Amendment ZTA 18-7, the new Bill No. 26-18, and the governing Code provisions – Montgomery County Code Sections 2-140 (OZAH’s General Powers, Duties and Functions); 2A-1 *et seq.*, the County Administrative Procedures Act; 29-19 and 29-26 regarding the licensing of accessory apartments; and Chapter 59 (the Zoning Ordinance).

Action

The County Council for Montgomery County, Maryland approves the following resolution:

- 1) The attached Rules of Procedure for Agency Referral and Accessory Apartment Cases Heard by the Office of Zoning and Administrative Hearings (OZAH) are approved.
- 2) The attached Rules will be effective October 30, 2018.

This is a correct copy of Council action.


Megan Davey Limarzi, Esq.
Clerk of the Council

**RULES OF PROCEDURE FOR AGENCY REFERRAL & ACCESSORY
APARTMENT CASES HEARD BY THE OFFICE OF ZONING AND
ADMINISTRATIVE HEARINGS (OZAH)**

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INTRODUCTION

Authorizing Laws and Council Resolutions:

The procedures of the Montgomery County Office of Zoning and Administrative Hearings (OZAH) are governed by the following laws:

Montgomery County Code:

Section 2-140 (OZAH's General Powers, Duties and Functions)

Section 2A-1 *et seq.*, the County Administrative Procedures Act

Chapter 59 (Zoning Ordinance)

Code Sections 29-19 and 29-26 regarding the licensing of accessory apartments

ZTA 18-7 adopted on October 9, 2018, in Ord. No. 18-53 (eff. 10/29/18) and Bill 26-18, enacted on October 9, 2018 (eff., if signed, on 1/8/19) modified the accessory apartment licensing process by substituting a waiver procedure for the conditional use process.

1.0 Rules for Cases Referred to OZAH by a County Agency for a Hearing or Arising Out of Accessory Apartment Objections or Requests for a Waiver

1.1 Governing Procedures/Conflict of Laws.

The Administrative Procedure Act (APA), Montgomery County Code, §2A-1, *et. seq.*, supplemented as set forth here, governs pre-hearing and hearing procedures. The APA controls if there is any conflict between the APA and these Rules of Procedure.

1.2 Initiation of Hearing Process.

An authorized County agency may initiate proceedings under these rules by filing an order referring the matter to the Office of Zoning and Administrative Hearings for a hearing. An individual may also initiate proceedings relating to accessory apartment applications by filing an objection to a finding made by the Director of the Department of Housing and Community Affairs (DHCA) under Montgomery County Code Section 29-19, or by seeking a waiver of parking or distance requirements established under Zoning Ordinance §59.3.3.3.

1.3 Administrative Record.

The Administrative Record in non-zoning cases shall consist of all documents and materials properly filed with the Office of Zoning and Administrative Hearings (OZAH). OZAH's administrative personnel shall date and docket such filings on the date received by OZAH. Such filings will become a part of the Hearing Record in the case only if admitted by the Hearing Examiner under Rule 1.7.7.

1.4 Parties.

As used in these Rules, a person or organization may become a party to a case referred to OZAH by a County agency by being either the Complainant or Respondent in the County agency's proceeding. A person or organization may become a party to an accessory apartment case by filing an objection to a finding of the DHCA Director, or by requesting a waiver of parking or distance requirements established under Zoning Ordinance §59.3.3.3., or by testifying at the hearing.

1.4.1 Representation.

Under Maryland law concerning the unauthorized practice of law, groups, organizations or entities must be represented by a member of the Maryland Bar (or admitted *pro hac vice*), unless individual members wish to offer testimony in narrative form (*i.e.*, without the need for an attorney to conduct direct examination).

1.5 Pre-Hearing Procedures.

1.5.1 Filings Initiating an OZAH Proceeding.

All filings initiating an OZAH Proceeding, including agency referrals, charging documents, complaints, objections and requests for waivers, must be signed and submitted in writing.

1.5.2 Correspondence.

Correspondence filed with OZAH must be signed. OZAH will accept Digital IDs if verifiable; Scanned and e-mail signatures are accepted only if OZAH receives a signed, hard copy of the submission within 10 days of its filing date. The party filing any written matter with OZAH must serve a copy on the opposing party either in person, or by first-class mail, fax, or e-mail.

1.5.3 Submissions.

A party who submits written material to OZAH must do so in duplicate hard copy. Any such material must also be submitted in electronic form (in Microsoft WORD for text documents and in PDF or JPG format for images). The electronic copies may be submitted on compact discs or thumb drive, or sent by e-mail.

1.5.4 Subpoena Requests.

Subpoena requests must be submitted no later than 14 days before the scheduled public hearing and with sufficient time for the person to be served. Each request must identify the name and address of the person to be subpoenaed and specify any documents to be produced. Requests must also include a statement explaining why the witness's testimony or documents requested are relevant to the case. In the case of witnesses who are state or county employees, the Hearing Examiner may secure their attendance on a voluntary basis, but may issue a subpoena if the employee does not voluntarily comply.

1.5.5 Public Access to Records.

The record of all cases will be maintained by OZAH. All records that are not required by law to be kept confidential will be available for public inspection between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. All parties in a case are charged with knowledge about the contents of the record and should periodically inspect it. Persons seeking to review the record of particular cases are encouraged to make an appointment to ensure availability of the file. Copies of reproducible documents of record will be provided by OZAH upon request at a fee established separately. The record in any completed case may also be examined at OZAH, provided reasonable prior notice is given in order to permit retrieval of the file.

1.5.6 Summary Proceedings.

Any party may move for summary disposition when there is no genuine issue of material fact to be decided at a hearing, and that party is entitled to a ruling as a matter of law. The Hearing Examiner, on the Examiner's own motion, may also invite the parties to brief the issue of whether summary disposition would be appropriate for all or part of the relief requested, and if so, to file a motion for summary disposition. In cases where the Hearing Examiner is not the deciding official, summary proceedings may result in a report and recommendation to the deciding body by the Hearing Examiner of dismissal or other finding without the need for an evidentiary hearing. Any party against whom such a ruling is suggested, either by another party or by the Hearing Examiner, must be given at least 10 days to respond to the motion for summary disposition.

1.6 Authority of Hearing Examiner.

It is the duty of the Hearing Examiner to make a complete record in the most expeditious manner. When hearing cases, the Hearing Examiner has the following authority:

- 1.6.1 administer oaths;
- 1.6.2 grant or deny applications for subpoenas;
- 1.6.3 rule on petitions to revoke subpoenas;
- 1.6.4 rule upon offers of proof and receive relevant evidence;
- 1.6.5 regulate the course of the hearing, including limiting the amount of time given for each party's case in chief, provided each side is given equal time;;
- 1.6.6 hold conferences for simplification of the issues;
- 1.6.7 dispose of procedural requests, motions, or similar matters and to order hearings reopened or consolidated, or to grant reconsideration of a ruling or a rehearing;
- 1.6.8 call, examine and cross-examine witnesses and obtain and introduce into the record documentary or other evidence; allow the record to remain open for a specific time period; and in the discretion of the Hearing Examiner, require the designation of specific persons to conduct cross-examination on behalf of other individuals;
- 1.6.9 conduct a public hearing at the site which is the subject of the application;
- 1.6.10 waive minor procedural defects or errors that do not affect substantive rights of the parties in order to proceed on the merits;
- 1.6.11 ask parties to submit proposed findings of fact and memoranda of law;
- 1.6.12 request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support of it;
- 1.6.13 exercise all additional powers included in Section 2A-8(h)(1)-(16) of the County Code;
- 1.6.14 maintain orderly conduct of the public hearing; and
- 1.6.15 take any other action authorized or necessary under applicable law or these rules.

1.7 Hearings.

1.7.1 Location of Hearings.

Unless otherwise announced in the notice of hearing or at a public hearing, hearings will be held in the Judge Rita C Davidson Memorial Hearing Room on the second

floor of the Council Office Building (COB), 100 Maryland Avenue, Rockville, MD 20850. Room changes, if necessary, will be posted in the COB.

1.7.2 Public Hearings.

All hearings will be public unless otherwise mandated by law. Where mandated by law, such as in the case of personnel records of non-parties, the Hearing Examiner may order redaction of identifying information from documents and the identification of the individual by a numbering or other system. The person whose identifying information is redacted may also be referred to during the hearing by the assigned number or other system identifier.

1.7.3 Testimony.

Testimony at the hearing will be under oath and subject to cross-examination.

1.7.4 Hearing Transcript.

The hearing will be transcribed; OZAH will arrange for the court reporter.

1.7.5 Order of Hearing.

Parties must present their case in accordance with the controlling law. Disorderly persons may be excluded by the Hearing Examiner.

1.7.6 Rule on Witnesses.

The Hearing Examiner may grant a rule on witnesses, *i.e.*, a rule excluding witnesses (other than the parties themselves) from the hearing room except during the witness's own testimony.

1.7.7 Hearing Record.

The hearing record on which the Hearing Examiner will base his or her findings and conclusions will consist of the verbatim transcript of the testimony and exhibits admitted at the hearing. The record will not include matters filed with OZAH by a referring agency, except as necessary to establish jurisdiction (*e.g.*, the Complainant's complaint and the agency's referral to OZAH). Other items will be included in the record only if the parties stipulate to them, or they are admitted at the hearing or they are admitted after notice to the parties by the Hearing Examiner.

1.7.8 Recording a Hearing.

Any person wishing to videotape, televise, photograph, broadcast or record a hearing must obtain permission from the Hearing Examiner in advance of the hearing date. The Hearing Examiner may grant permission unless the activity will be disruptive to the proceedings. No recording made under this rule, or a transcript of a recording, may be deemed part of the official record in a case, unless so ordered by the Hearing Examiner.

1.7.9 Rules of Evidence.

The strict rules of evidence do not apply to hearings. The Hearing Examiner may admit and consider any evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including

hearsay evidence that appears to be reliable in nature. Effect is given to the rules of privilege recognized by law. Incompetent, irrelevant, immaterial and repetitious evidence may be excluded, and the Hearing Examiner may restrict leading questions on direct examinations.

1.7.10 Cross-Examination.

A reasonable amount of cross-examination of witnesses for the parties or those called by the Hearing Examiner is permitted but questioning generally will be confined to the scope of direct testimony given by the witness. The Hearing Examiner may require that a spokesman for aligned parties be designated to conduct cross-examination.

1.7.11 Demonstrative Evidence.

Photographs of a size to permit filing in the record may be required instead of large or poorly visible physical exhibits. Other demonstrative evidence may be submitted if it can be reasonably included in the record. The submitting party must provide an electronic copy of all exhibits.

1.7.12 Official Notice.

The Hearing Examiner may, before the close of the record, take official notice of public records and publications, and generally known facts. When official notice is taken, the Hearing Examiner must provide the parties notice and an opportunity to rebut.

1.7.13 Continuance of Hearing.

A hearing may be continued without additional written notice if the date and place of the next hearing are announced at a public hearing. If a continued hearing date is not announced at the public hearing, the Hearing Examiner must provide written notice of the date of the next hearing to all parties of record and to those entitled to notice of the original hearing date.

1.7.14 Closing of the Hearing Record.

Except as otherwise provided in these Rules, the hearing record will close after receipt of all pertinent evidence. The Hearing Record will normally close at the conclusion of a hearing but it may be set for a date certain at the Hearing Examiner's discretion. The Hearing Examiner may reopen the hearing record to receive additional evidence, receive further evaluation of the application by appropriate government agencies, or to take official notice of documents or records. The reopening of the hearing record must not unduly delay consideration of the matter.

1.7.15 Services of an Interpreter.

Any party who needs the services of an interpreter to participate in a public hearing, must so advise OZAH no later than seven (7) days before the public hearing by calling 240-777-6660 (TTY 240-777-7914) or emailing OZAH at ozah@montgomerycountymd.gov. OZAH cannot guarantee that an interpreter can be made available if notified of the request less than seven (7) days before the public hearing.

1.8 Sanctions.

The Hearing Examiner may impose any sanction authorized by the Administrative Procedures Act (§2A-8(j)) for failure to comply with these rules. Any unexcused delays or obstructions to the pre-hearing and hearing process may also be sanctioned. If any costs assessed are not paid, an enforcement order may be adopted by the Hearing Examiner and referred to the County Attorney for collection. If the non-complying party is the Complainant in an agency referral matter or an Objector or a Waiver Requestor in an accessory apartment matter, the Hearing Examiner may dismiss the objection or waiver request or recommend dismissal of the complaint, without further proceedings. If the non-complying party opposes the complaint, objection, or request for waiver, the delinquency must not operate to unduly delay the Hearing Examiner's Report and Recommendation or Decision.

1.9 Time Periods.

All time periods in proceedings subject to these Rules must be calculated under §1-301 of the Montgomery County Code. In addition, whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party and service is made by mail, three days must be added to the prescribed period.

2.0 Rules Governing Cases Referred by County Agencies

2.1 Governing procedures.

Pre-hearing and hearing procedures will be governed by procedures set forth in the referring agencies' governing authority, the Administrative Procedure Act (APA), Montgomery County Code, §2A-1, et. seq., and any Executive Regulations applicable to proceedings before the agency.

2.2 Pre-hearing Procedures.

In addition to the procedures set forth in Part 1 of these Rules, the following pre-hearing procedures apply to cases referred by County agencies:

2.2.1 Pre-Hearing Conference.

In addition to any other powers granted by the agency's governing law, Executive Regulations, or the APA, the Hearing Examiner may conduct a pre-hearing conference in order to schedule discovery deadlines, hearing dates, submission of pre-hearing statements and other relevant case management issues. These may include, without limitation:

2.2.1.A One or more dates by which each party must identify each person whom the party expects to call as an expert witness at trial, including all information specified in Rule 2-402 (g) (1);

2.2.1.B A date by which all discovery must be completed;

- 2.2.1.C A date by which all dispositive motions must be filed, which must be no earlier than 15 days after the date by which all discovery must be completed;
- 2.2.1.D A date by which any additional parties must be joined;
- 2.2.1.E A date by which amendments to the pleadings are allowed as of right;
- 2.2.1.F Any limitations on discovery otherwise permitted under these under the agency's governing authority, Executive regulations, or the APA, including reasonable limitations on the number of interrogatories, depositions, and other forms of discovery;
- 2.2.1.G The resolution of any disputes existing between the parties relating to discovery;
- 2.2.1.H An order designating or providing for the designation of a neutral expert to be called as the Hearing Examiner's witness;
- 2.2.1.I A further scheduling conference or pre-hearing conference date;
- 2.2.1.J Provisions for discovery of electronically stored information;
- 2.2.1.K A process by which the parties may assert claims of privilege or of protection after production; and
- 2.2.1.L Any other matter pertinent to the management of the action.

2.3 Scheduling Order and Consolidation of Cases.

- 2.3.1 The Hearing Examiner may issue a scheduling order concerning all matters decided at the pre-hearing conference.
- 2.3.2. When multiple applications raise common question of law or fact, the Hearing Examiner, may order a joint hearing or consolidation of any or all of the claims, issues, or actions. Any such order may be prompted by a motion from any party or the at the Examiner's own initiative. The Hearing Examiner may enter an order regulating the proceeding to avoid unnecessary costs or delay. The following procedures for consolidated hearings govern:
 - a) A motion to consolidate must include a statement specifying the common issues of law and fact.
 - b) The Hearing Examiner may order a consolidated hearing if the Examiner finds that a consolidated hearing will more fairly and efficiently resolve the matters at issue.

- c) If the motion to consolidate is granted, the applicant and opposition must include all proposed hearing exhibits with their pre-hearing statements.

2.4 Motions.

All requests for rulings by the Hearing Examiner must be made by motion. Any motion that seeks a determination by the Hearing Examiner of any preliminary matter including, but not limited to, motions for postponement, motions to quash subpoenas, and other submissions must be made promptly and, where possible, before the public hearing; however, nothing precludes the Hearing Examiner, on the Examiner's own motion, from reaching a determination on any preliminary matter as the interests of justice may require without a hearing. If made before the public hearing begins, motions must be sent to all those entitled to notice of the original hearing. Motions must include a certification of the date mailed.

2.4.1 Responses to Motions.

Unless otherwise agreed or ordered by the Hearing Examiner, responses to pre-hearing motions or other pre-hearing filings should be served on the opposing party and filed with OZAH in hard copy within 10 calendar days after service. Unless a different time period is directed by the Hearing Examiner, replies must be filed within 5 days of the date of serving the opposition. Additional responses are not permitted. Service on a party is complete when deposited with the United States Postal Service, and filing is complete when delivered to OZAH's office by the due date. All motions must include a Certificate of Service stating the date served, and the method of service (*i.e.*, fax, first-class mail, e-mail, etc.).

2.4.2 Stipulated Motions.

All motions must include a statement that the other party has been asked to agree to the relief requested in the motion. The motion must also include a statement disclosing whether the other party has indicated that it will oppose the motion. If the movant is unable to reach the other party after a reasonable effort to do so, the motion shall include a statement detailing the efforts to make contact.

2.5 Law Governing Discovery.

The Hearing Examiner may determine that the applicable discovery parameters will incorporate the Maryland Rules for civil discovery in the Circuit Courts, Md. Rule 2-401 *et seq.*, subject to modification by the Hearing Examiner to accommodate the relatively informal nature of administrative proceedings.

2.5.1 The parties are encouraged to reach agreement on a plan for the scheduling and completion of discovery.

2.5.2 Filing Discovery Material. Discovery material shall not be filed with OZAH. The party propounding the discovery must promptly file with OZAH a notice stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served. The party generating the discovery material must retain the original and must make it available for inspection by any other party.

Discovery materials may be introduced as evidence at the hearing, or be used for cross-examination, under the normal rules of evidence. They may also be used as exhibits to support or oppose motions.

2.6 Pre-Hearing Submission.

All parties must file a pre-hearing submission at least 20 days before a public hearing or at another date specified in a scheduling order. The prehearing submission must include all information required in Montgomery County Code, §2A-7(a), a brief summary of the party's legal theory, and a set of labeled exhibits.

2.7 Joint Pre-Hearing Submission.

The Hearing Examiner may require the parties to file a joint prehearing statement at least 10 days before the hearing or at another date set in a scheduling order. The joint statement must specify all matters that are mutually stipulated and all objections to the authenticity or admissibility of any opposing exhibits.

2.8 Hearing.

The ordinary, but not mandatory, order of presentation shall be:

2.8.1. Disposition of all outstanding preliminary motions and preliminary matters

2.8.2 The Complainant's case in chief

2.8.3 The Respondent's case in chief

2.8.4 If the Respondent does not include a government agency, any governing agency may present testimony on the case

2.8.5 The Complainant's rebuttal case

2.8.6 The Respondent's surrebuttal

2.8.7 Closing Statements

2.9 Dismissal.

The Hearing Examiner may recommend to the referring agency that a complaint should be dismissed if:

2.9.1 The complaint has been pending for 1 year or longer;

2.9.2 The complainant has not actively pursued the application; and

2.9.3 The Hearing Examiner notifies the complainant of contemplated dismissal at least 30 days before issuing a recommendation to dismiss the case.

2.10 Time for Rendering Report or Decision.

The Hearing Examiner must issue a report or decision within 45 days of the date the record closes unless a different time period is established by applicable law or by the order referring the case to OZAH. The Hearing Examiner may reasonably extend the time for issuing a report or decision.

2.11 Notification of Reports and Decisions.

OZAH must notify the complainant, respondent, and all parties of record that the report or decision in a case has been issued. The notice must briefly state (1) whether the complaint

or objection was recommended for approval or denial, (2) the report or decision is available for review both on OZAH's website and in OZAH's offices between 9:00 am and 4:30 pm on days the County is open for business, and (3) any right to request oral argument or to appeal a decision. A copy of the report or decision must be posted on OZAH's website, unless the Hearing Examiner or the referring agency has ordered the record to be closed to the public.

3.0 Rules Governing Requests for Waivers or Objections to Accessory Apartments

3.1 Definitions.

The terms listed in these Rules have the following meanings:

3.1.1 *Director* means the Director of the Department of Housing and Community Affairs (DHCA).

3.1.2 *Director's Report* means a document issued by the Director containing written findings as to whether all criteria for approval of the license application have been met. The Director's Report also contains a "conditional" finding of approval or denial of the license that may become final unless a Request for Findings or an Objection is filed with OZAH.

3.1.3 *Objection* means a form filed in OZAH by a License Applicant or another person by which a person may disagree with any of the findings contained in the Director's Report.

3.1.4 *License Applicant* means an applicant for an accessory apartment license.

3.1.5 *Objector* means any person who has filed an objection to the Director's Report.

3.1.6 *Requestor* means any person who has filed a Request for a waiver relating to a Director's Report.

3.1.7 *Request for Waiver* means a form filed in OZAH by an accessory apartment License Applicant seeking a waiver of on-site parking or statutory distance requirements from existing accessory apartments after the DHCA Director has conditionally denied a license application based on those factors.

3.3 Filing Requests for Waivers or Objections to the Director's Report:

3.3.1 Filing Procedure:

Requests for Waivers or Objections must be filed on a form provided by OZAH and signed by the Requestor or Objector. Requests for Waivers and Objections may be filed at OZAH between 9:00 a.m. and 4:30 p.m. on days the County is open for business. All information requested on the form must be provided. The form

may be delivered either by mail or in person. If delivered by mail, the postmark on the letter must be no later than 30 days from the date the Director's Report is issued.

3.3.2 Time for Filing:

Requests for Waivers or Objections will be accepted for filing within 30 days after the Director's Report is issued. OZAH will *not* accept Requests for Waivers or Objections before the Director issues his Report.

3.4 Scheduling.

3.4.1 Hearing Date.

The Hearing Examiner must schedule a public hearing to begin within 30 days of the date the objection or request for waiver is filed. The public hearing may be continued or postponed to a date beyond 30 days of the filing date upon the Hearing Examiner's determination of good cause.

3.4.2 Postponements.

In the absence of extraordinary circumstances, requests to postpone a hearing must be filed at least 10 days before a scheduled hearing.

3.4.2.1 Postponement requests must be in writing, and signed by the party requesting the postponement. Postponement requests must state the reason why a postponement is necessary. Copies of the postponement request must be served on all other parties.

3.4.2.2 Postponement requests must be served by the most expeditious means available (*i.e.*, e-mail or fax, personal service) and by first-class mail. If service cannot be made by any alternative, a party must state why service (other than first-class mail) could not be obtained.

3.4.2.3 Any other party may file a response to the request for postponement within 5 days.

3.6 Pre-Hearing Statements.

The Hearing Examiner may require the License Applicant, the Objectors or any other party to file Pre-Hearing Statements under the requirements of the APA or these Rules.

3.7 Order of Hearing.

The ordinary, but not mandatory, order of presentation is:

3.7.1 License Applicant's case in chief

3.7.2 Opposition's case in chief

3.7.3 Testimony of DHCA representative

3.7.3 License Applicant's rebuttal

3.7.4 Opposition's rebuttal

3.7.5 DHCA's Response to opposition and/or License Applicant's rebuttal

3.8 Multiple Requests for Findings or Objections.

3.8.1 Hearing Date.

When another Objection or Request for Waiver is filed regarding the same license application, the Hearing Examiner may postpone, continue, or consolidate scheduled public hearings on a Request for Waiver or an Objection. The hearing may also be continued if any necessary party is unavailable.

3.8.2 Re-Opening the Record.

Where a timely Objection to an accessory apartment license is filed after the record has closed on a Waiver Request or an Objection to the same accessory apartment, the Hearing Examiner may re-open the record in the first case to consider both matters before issuing a decision.

3.9 Stay of Proceedings.

The Hearing Examiner may stay the proceedings in an accessory apartment Request for Waiver or Objection case, if the license applicant has also appealed a determination of the Director to the Commission on Landlord-Tenant Affairs under Montgomery County Code Section 29-25(c).

4.0 Dismissal.

The Hearing Examiner may dismiss a Request for Waiver or an Objection if:

4.0.1 The objection or waiver request has been pending for 1 year or longer;

4.0.2 The license applicant or the objector has not actively pursued the matter;

4.0.3 The Hearing Examiner notifies the license applicant and the objector of the contemplated dismissal at least 30 days before issuing a recommendation to dismiss the case.

5.0 Time for Rendering Decision.

The Hearing Examiner must issue a decision within 30 days of the date the Hearing Record closes. The Hearing Examiner may extend the time for issuing a decision for a reasonable period.

6.0 Notification of Decisions.

OZAH must notify all parties of record that the decision in a case has been issued. The notice must briefly state (1) whether the Request for a Waiver or Objection has been approved or denied, (2) that the decision is available for review both on OZAH's website and in OZAH's offices between 9:00 am and 4:30 pm on days the County is open for business, and (3) any right to request an appeal the case. A copy of the decision must be posted on OZAH's website.