City of Annapolis
BOARD OF PORT WARDENS
Department of Planning & Zoning
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CITY OF ANNAPOLIS
BOARD OF PORT WARDENS

RULES OF PROCEDURE

These Rules of Procedure shall govern the conduct of all applications and appeals brought before the Board of Port Wardens ("Board") for public hearing and other meetings pursuant to Title 15 of the City of Annapolis Code, as may be amended from time to time. ("City Code").

Article 1. Powers

The Board shall hear and decide all applications and appeals in accordance with Title 15 of the City Code, as may be amended from time to time.

Article 2. Board Members

a. The Board shall consist of five members, all appointed by the Mayor and confirmed by the City Council.

b. The term of office of a Board member is 3 years.

c. A Board member may be re-appointed for additional and consecutive terms.

d. Board members shall be dedicated to the interests of the City.

e. Board Members shall be impartial and judicious in deciding all application and appeals.

f. Board members shall generally be informed about and familiar with concepts of water use, navigation, aquatic conservation and environment, boating and small craft use, and other uses such as canoes, kayaks, and SUPs.

g. No Board member shall allow bias or prejudice to affect his or her ability to exercise fairness and reason in any application or appeal before the Board.

h. No Board member shall represent, testify, or act on behalf of any applicant, appellant, or member of the general public before the Board.

i. No former Board member shall represent, testify or act on behalf of any applicant, appellant, or member of the general public before the Board for at least one year after the date the Board member's service on the Board has ended, or on any matter in which the former Board member participated while a member of the Board.

j. A Board Member may represent himself or herself before the Board on any application or appeal that he or she has filed, but may not participate as a Board member.

k. A Board member may be removed in accordance with the City Code for:

1. Incompetence;
2. Misconduct;
3. Chronic failure to attend meetings;
4. Conviction of a misdemeanor bearing on character trait for honesty; or;
5. Conviction of a felony.

l. In the event of a removal, the Mayor's office shall provide the Board member with written notice of the factual basis for and grounds for removal and an opportunity for a public hearing before the City Council to contest the action. The City Council shall either affirm or deny the removal or deny the removal with reasonable conditions.

m. The Mayor shall appoint a person to fill the unexpired term of any Board member who resigns from the Board, is removed from the Board and has exhausted all legal remedies, or is unable to complete his or her term for any other reason, including but not limited to incapacity or death.

n. The Board shall elect one Board member as Chair and one Board Member as Vice Chair at the Board's meeting in January annually.

o. The Chair shall preside at all meetings of the Board, and in the Chair's absence the Vice Chair shall preside with all powers of the Chair.

Article 3. Initial and Subsequent Filing Requirements for Applications and Appeals

a. Applications and appeals shall contain all information required by the City Code and the Department of Planning and Zoning ("Department") and be submitted on a form provided by the Department.

b. The Director of Planning and Zoning ("Director") shall determine when an application is complete in accordance with the City Code.

c. The Department shall number serially and docket each application and appeal.

d. No later than 10 days before the date of a public hearing, the applicant or appellant shall file with the Department all documents that the applicant or appellant intends to offer into evidence at the public hearing.

e. If an applicant or appellant intends to offer a witness at a public hearing as an expert and to ask the Board to qualify the witness as an expert, the applicant or appellant shall identify the witness by name and field of expertise and submit any reports of the witness that they intend to offer into the record at the public hearing.

f. If an applicant or appellant seeks to offer into evidence at a public hearing any information or documentation that was not submitted timely, the information or documentation shall be admitted if, in the discretion of the Chair, to do so would not cause significant prejudice to any party to the public hearing. The Chair may take into consideration the interests of the general public in determining whether to admit information or documentation that is untimely submitted into the record.

Article 4. Agenda

a. The agenda for each Board meeting shall be prepared by the Department and shall be approved by the Chair prior to public notice of the agenda.

b. Applications and appeals shall be placed on the agenda for a public hearing in the chronological order in which they are received by the Department and determined by the Director to be complete, unless there is good cause to make an exception and no significant prejudice to an applicant or appellant results. The Chair may take into consideration the interests of the general public in making determinations about the agenda.

c. The Chair may revise the agenda before and during each Board meeting in the interests of fairness, economy and expediency.

d. The Chair may order that a hearing on any application or appeal be placed out of the chronological order of the filing and completeness determination of any application or appeal.

e. The agenda for each Board meeting shall be as follows:

1. Roll Call;
2. Declaration of quorum;
3. Approval of Minutes;
4. Administering Oaths;
5. Public hearings on applications and appeals;
6. Approval of Findings;
7. New business;
8. Old business;
9. Adjournment.

Article 5. Conduct of Meetings

a. All meetings of the Board shall be open to the public except for meetings that are closed in compliance with the Maryland Open Meetings Act.

b. The presence of three members of the Board at a public hearing shall constitute a quorum.

c. In the absence of both the Chair and the Vice Chair at any proceeding of the Board, the senior Board member in terms of length of service shall act as Chair and shall preside with all powers of the Chair.

Article 6. Public Hearings

a. The Board shall conduct a public hearing on each application and appeal filed with the Department in accordance with Title 15 of the City Code, as may be amended from time to time.

b. The Board shall hold a public hearing at such times and places as the Chair shall designate.

c. A public hearing shall be audio recorded.

d. The Chair shall control the course of a public hearing.

e. The Chair or the Vice Chair may administer oaths.

f. The Chair may compel the attendance of witnesses or production of documents by subpoena, whether upon the request of an applicant or appellant, or any Board Member, or upon motion of the Chair.

g. The order of procedure for a public hearing on an application or appeal shall be as follows:

1. Presentation by the Department;
2. Presentation by the applicant or appellant;
3. Public testimony;
4. Rebuttal by the applicant or appellant;
5. Deliberations by the Board.

h. The Chair may permit a member of the public who opposes an application or appeal with the testimony of a witness, including an expert witness, to make an organized presentation before the Board. The Chair may place reasonable restrictions on the presentation in terms of the number of witnesses who may testify, the cross examination of witnesses, and the amount of time allotted for the presentation.

i. The applicant or appellant shall provide documentation offered into the record in a format suitable for presentation at a public hearing, which allows a clear and practical understanding of the issues relevant to the application and which depicts a contextual relationship between the property which is the subject of the application or appeal and adjacent and surrounding properties which have relevance to the application.

j. The Chair may call and examine witnesses and introduce documentary evidence into the record. The Chair may allow any member of the Board to examine any witness.

k. The Chair shall assign exhibit numbers for all written, documentary, and other tangible exhibits admitted into the record.

l. The Chair shall call for a vote on the application after deliberations.

m. Only those Board members who have actually been present at a proceeding and heard all the evidence and testimony in a proceeding before the Board shall participate in deliberations and vote, except that the Chair shall permit a Board member who has been absent for any part of a public hearing to listen to the audiotape of all of the testimony to date and read all of the documentary evidence of record before the public hearing is resumed, and participate in the remainder of the public hearing, The Chair shall place on the record at the resumption of the public hearing a statement to this effect.

n. If a matter arises that is not addressed by or resolved by these Rules, the Chair may use the latest edition of Robert's Rules of Order to make a ruling.

o. The Chair may recess or continue a public hearing in progress or a public hearing which the Chair has called but has not commenced to a time and place certain which is indicated on the record without a requirement of additional public notice.

p. The Chair may permit the record to remain open for a reasonable period of time designated by the Chair to allow for the receipt of additional testimony or documentary evidence or the filing of legal memoranda.

Article 7. Evidence

a. The Chair shall admit evidence which is relevant, material, competent, and probative of any aspect of proof required by an applicant or appellant.

b. The Chair shall sustain or overrule evidentiary objections.

c. The Chair shall relax the rules of evidence applied to judicial hearings.

Article 8. Motions

a. An applicant or appellant may submit a written motion to the Board at least 10 days prior to a public hearing or make a speaking motion during a public hearing.

b. If there is a written motion submitted prior to a public hearing, the Chair shall allow a written response by a date the Chair determines.

c. The Chair shall rule on motions at a time that the Chair considers proper.

d. The Chair may reserve a ruling on a motion to a time the Chair considers proper.

e. Before ruling on a motion, the Chair may allow oral argument and questions by Board members.

Article 9. Public Testimony

a. The Chair shall allow members of the public to present testimony and documentation to the Board at a public hearing on an application or appeal.

b. Members of the public shall indicate whether they are present and participating on behalf of an entity and, if requested by any Board member or party to the proceeding, shall provide documentation to that effect.

c. Board members may ask questions of any member of the public who gives public testimony.

d. The Chair may allow members of the public and an applicant or appellant to ask questions of each other if the Chair believes that such questioning would likely result in the admission of relevant evidence.

e. Any member of the public who gives public testimony at a public hearing on an application or appeal shall sign and complete a sign-in document provided by the Board and shall provide the following:

1. Name and address;
2. Whether he or she supports or opposes the application;
3. The address of the property that will be affected if the application is approved
4. The manner in which the property will be affected;
5. The legal interest that he or she has in the property that would be affected.
6. The distance between the property which is the subject of the application and the property which would be affected;
7. The environmental, economic, social or other impact that would occur to his or her property if the application was granted;
8. How his or her interests would likely be impacted more significantly than the interests of others generally;
9. A written statement, if any, containing such information.

Article 10. Expert Witnesses

a. The Chair may qualify a person who is offered by a party as an expert in a particular field.

b. Board members may ask questions relating to whether a person should be qualified as an expert in a certain field.

c. The Chair shall allow an applicant or appellant direct and cross examine of a witness offered as an expert as to the witness' qualifications.

d. In determining whether a witness offered as an expert should be qualified as an expert in a certain field and to express expert opinions, the Chair shall consider:

1. The knowledge, skill, experience, training or education of the witness offered as an expert;

2. The necessity of the testimony for the particular case;

3. Whether the expected testimony is relevant.

e. The Chair shall limit the testimony of an expert witness to the area of the field of expertise for which he or she has been qualified.

Article 11. Site Visits

a. The Board may vote to visit a site which is the subject of an application or appeal before the Board.

b. Before a site visit, the Chair shall place on the record the rules according to Maryland case law which shall be observed at a site visit.

c. An applicant, appellant or their legal and professional representatives and members of the public may participate in a site visit.

d. An applicant, appellant or their legal and professional representatives shall visit the site at the same time.

e. No testimony shall be taken during a site visit.

f. No discussion of the facts, applicable law or merits of an application or appeal shall occur during a site visit.

g. When a public hearing resumes after a site visit, the Chair shall place on the record the fact that the site visit occurred, the persons present, and observations made, and shall verify on the record that that no testimony or discussion took place.

h. The Chair shall allow Board members and an applicant or appellant to place their observations from the site visit on the record.

Article 12. Deliberations

a. In its deliberations, the Board shall make findings of fact and conclusions of law on the review criteria applicable to the application or appeal.

Article 13. Voting and Decisions

a. The Board shall vote on an application or appeal no later than 45 days after the conclusion of a public hearing, unless the Chair determines that good cause for an extension of time exists.

b. The Board shall adopt Findings or an Opinion and Order within 60 days after a vote of the Board on an application or appeal, unless the Chair determines that good cause for an extension of time exists.

c. Any Board member may write or join in a dissenting statement of Findings of an Opinion and Order.

d. The vote of at least a majority of the members of the Board hearing an application or appeal is necessary to support Findings or an Opinion and Order.

Article 14. Reconsideration

a. An applicant or appellant may file a motion for reconsideration of the Findings or an Opinion and Order of the Board.

b. A motion for reconsideration shall be in writing and filed with the Department no later than 10 days after the date of the Findings or written Opinion and Order of the Board.

c. A motion for reconsideration shall state specifically the grounds in support of the motion.

d. The party filing a motion for reconsideration shall serve it by regular or electronic mail upon the other party.

e. A party opposing a motion for reconsideration shall file a written response filed with the Department no later than 7 days after service of the motion for reconsideration.

f. Public notice of a motion for reconsideration shall be given in accordance with the requirements of the City Code for notice of an original application or appeal.

g. If the Board grants a motion for reconsideration, the Board shall receive new evidence that is relevant only if the evidence could not reasonably have been presented at the original public hearing.

h. The Board, on a motion made by a Board Member not later than 15 days following the vote on an application or appeal, may reconsider a vote. The Board may take additional testimony before deliberating and voting.

i. No Board member shall participate or vote in a reconsideration hearing unless the Board member participated in and voted on the original application or appeal.

j. Neither the filing nor granting of a motion for reconsideration shall automatically stay the effect of a final vote. The Chair may enter a stay on his or her own motion, a motion of a Board member, or a motion of an applicant or appellant, for good cause.

k. The Board, upon a motion for reconsideration, may affirm, modify, or reverse, in whole or in part, any vote, Findings, or written Opinion and Order.

Article 15. Recusal

a. A Board member shall note on the record, before commencement of a public hearing before the Board, or as soon as he or she realizes after commencement of a public hearing, that he or she has a conflict of interest or may have an appearance of a conflict of interest in connection with an application or appeal, and shall describe the conflict of interest or appearance of a conflict of interest.

b. If the Board member believes, as a result, that he or she cannot make any decision related to an application or appeal a fair and impartial manner, he or she shall recuse himself or herself from participating in the public hearing.

c. If an applicant or appellant in a proceeding requests that the Board member recuse himself or herself, they shall state on the record the reason for the request. The Board member shall recuse himself or herself, unless the Board member believes he or she can still make fair and impartial decisions related to the proceeding. The Chair may override a decision of a Board member not to recuse himself or herself and shall state on the record the reason for doing so.

d. If a recusal results in a failure to have a quorum, the public hearing shall be postponed until there is a quorum, or, if already commenced, the Chair shall postpone the public hearing until there is a quorum.

e. A Board member not present after a public hearing in which there is a recusal has commenced may participate when the public hearing is resumed, provided that the Board member has listened to an audiotape of all of the testimony of record to date and has read all of the documentary evidence of record before the public hearing is resumed, and places on the record at the resumption of the public hearing that he or she has done so.

Article 16. Ex Parte Communications

a. No Board member, either before or during the course of a public hearing shall discuss or attempt to discuss the facts or applicable law or merits of an application or appeal, or any other matter having to do with the application or appeal, with any other Board member, party to the application or appeal, member of the public, or any media outlet, for the purpose of discussing the facts, applicable law, or merits of the application or appeal, or for any other purpose related to the application or appeal.

b. A Board member shall note and describe on the record of a public hearing any off the record ex parte attempt by an applicant or appellant, or a representative of an applicant or appellant, or member of the public or any other individual, to influence the Board member in making a decision on an application or appeal.

c. A Board member may recuse himself or herself from participating in a public hearing if he or she believes that he or she cannot make a fair and impartial decision related to the public hearing because of an ex parte communication.

d. In the event of a recusal and failure to have a quorum, the provisions of Article 15 shall apply.

Article 17. Efforts to obtain further information about a proceeding before the Board

a. Any Board member may seek information or documentation from the Department prior to closure of the record. Each Board member who does so and receives information or documentation shall ask the Chair to admit the information or documentation into the record of an application or appeal. The Chair shall permit time for the review of the information or documentation by those participating in the application or appeal. The Chair shall admit the

information or documentation into the record of the application or appeal, subject to any objections sustained by the Chair.

Article 18. Withdrawal of Application or Appeal

a. An applicant or appellant may withdraw an application or appeal, in whole or part, at any time prior to the commencement of the public hearing or during a public hearing on the application or appeal.

b. Application or appeal filing fees shall not be refunded in the event of a withdrawal of an application or appeal.

c. The Board shall not hear a new application for at least 90 days after withdrawal of the application.

d. Withdrawal of an appeal shall not extend the statute of limitation for filing an appeal as stated in the City Code.

Article 19. Closed Sessions; Special Meetings

a. The Chair may schedule a special meeting of the Board on his or her own motion or on the motion of any Board member.

b. The Chair may hold a closed meeting of the Board on his or her own motion or on the motion of any Board member.

c. Closed meetings shall be in compliance with the Maryland Open Meetings Act, as may be amended from time to time.

d. Public notice of a special meeting or closed session shall be posted for public purposes at least 10 days in advance of the special or closed meeting.

Article 20. Effect of Rules

a. These Rules do not constitute jurisdictional requirements.

b. Any failure of the Board, the Department, or any applicant or appellant to comply with any Rule shall not invalidate an otherwise valid action or decision the Board.

Article 21. Amendment

a. The Board may amend these Rules at any regular or special meeting of the Board.

b. The Board shall hold a public hearing before deliberating and voting on an amendment of any Rule.

c. Amendments to the City Code that affect the Board's Rules shall become effective on the date of adoption of the amendment by the City Council.

Article 22. Waiver of Rules

a. The Board may waive any Rule if the Board determines there is good cause to do so, if a waiver would not prejudice the rights of an applicant or appellant, and if the waiver would not constitute a violation of law.

Article 23. Annual Report

a. The Department shall prepare and submit an annual report transmit to the Board as may be required by the City Code.

b. The annual report shall state the attendance of Board members, applications and appeals heard by the Board, corresponding Findings or Opinions and Orders rendered by the Board, and recommendations for amendments to the City Code or these Rules which would serve to clarify the functions of the Board.

Approved by:

Gene Godley, Chair

Willie Sampson, Vice Chair

John Butler, Board Member

Scott Anderson, Board Member

Robert Shapiro, Board Member

Date of Adoption: April 27, 2021

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