

# City of Annapolis

Board of Appeals

Department of Planning & Zoning

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## CITY OF ANNAPOLIS BOARD OF APPEALS RULES OF PROCEDURE

These Rules of Procedure are adopted pursuant to Maryland Annotated Code, Land Use Article, Section 4-304, and Section 21.08.040D of the Code of the City of Annapolis (“City Code”).

### Article 1. Powers

- a. The Board may hear and decide all applications, appeals and other matters permitted by Maryland Annotated Code, Land Use Article, Section 4-304, and Section 21.08.040D of the City Code, both as may be amended from time to time.

### Article 2. Membership

- a. The Board shall consist of five members, plus an alternate member to serve if a Regular Board member is absent or recuses himself or herself, all appointed by the Mayor and confirmed by the City Council.
- b. A Board member may be re-appointed for additional and consecutive terms.
- c. The term of office of a Board member is 3 years. A member whose term has expired may continue to serve until he or she has been reappointed or replaced.
- d. Board members shall be dedicated to the interests of the City as a whole and shall act in an informed, impartial, and judicious manner.
- e. Board members shall generally be informed about and familiar with concepts of land use, urban planning, architecture, landscape architecture, engineering, construction and zoning law.

- f. 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.
- g. The Board shall elect one member as Chair and one member as Vice Chair. The Chair shall preside at all meetings of the Board, and in the Chair's absence the Vice Chair shall preside and, in the absence of the Chair and Vice Chair, the senior most member of the Board shall preside with all powers of the Chair.
- h. The election of the Chair and Vice Chair shall occur at the first meeting in January of each year.

### **Article 3. Board Member Standards of Conduct**

- a. No Board member shall allow bias or prejudice to affect his or her ability to exercise fairness and reason in any proceeding before the Board.
- b. No Board member shall represent any applicant, appellant, or member of the general public before the Board.
- c. No former Board member shall represent 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.
- d. 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.
- e. A Board member shall note on the record, before any proceeding before the Board commences, or as soon as he or she realizes after a proceeding has commenced, that he or she has a conflict of interest or may have an appearance of a conflict of interest, and shall describe on the record the conflict of interest or appearance of a conflict of interest. If the Board member believes, as a result, that he or she cannot make any decision related to the proceeding in a fair and impartial manner, he or she shall recuse himself or herself from participating in the proceeding.
- f. If an applicant or appellant in a proceeding requests that a Board member recuse himself or herself, they shall state for the record the reason for doing so. The Board member shall recuse himself or herself, unless, after hearing from the parties, the Board member affirms he or she can still make fair and impartial decisions related to the proceeding. A majority of the Board must accept or override a decision of a Board member not to recuse himself or herself and shall state for the record the reasons for doing so.

- g. A Board member shall note and describe on the record of a proceeding any off-the-record, ex-parte, attempt by an applicant, appellant or other party or an agent of an applicant, appellant or other party or any other individual, to influence the Board member in any manner related to the proceeding, including but not limited to the Board member's participation in deliberations or vote. The Board member may recuse himself or herself from participating in the proceeding if he or she believes that he or she cannot make fair and impartial decisions related to the proceeding. In the event of a recusal, the provisions of section j, below, shall apply if the recusal results in the failure of a quorum.
- h. A Board member may be removed through the procedure specified in the Code for:
  - incompetence;
  - misconduct;
  - chronic failure to attend meetings;
  - conviction of a misdemeanor bearing on character trait for honesty; or,
  - conviction of a felony.
- i. 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.
- j. If, during a hearing in a matter, because of recusal, removal or for any other reason, the Board no longer has a quorum, the proceeding shall be continued until there is a quorum. A Board member not present during all or part of a proceeding in which there is a failure of a quorum may participate when the proceeding is resumed, provided that the Board member has reviewed an audiotape or videotape of all of the testimony of record to date and has read all of the documentary evidence of record before the proceeding is resumed and places on the record at the resumption of the proceeding an affirmation that he or she has done so.

#### **Article 4. Initiation of Proceedings**

- a. Applications, appeals and other proceedings shall be initiated by filing with the Department of Planning and Zoning the appropriate application or other form provided by the Department and containing all information required by the City Code.
- b. The Director of Planning and Zoning shall determine when the process for initiating an application, appeal or other proceeding is complete.
- c. Each complete application, appeal or other proceeding shall be numbered serially and docketed and placed on the agenda for a public hearing in the order in which it was completed.

- d. An applicant or appellant may withdraw an application or appeal, in whole or in part, at any time prior to the commencement of the public hearing on the application or appeal.
- e. Withdrawal of an application or appeal after a public hearing has commenced shall not be authorized by the Chair unless, in the discretion of the Chair, to do so would not cause significant prejudice to any person participating in the proceeding.
- f. Filing fees shall not be refunded in the event of a withdrawal of an application. However, fees paid for an appeal shall be refunded if the appeal is successful, in whole or in part, or fifty percent refunded if the appeal is withdrawn by the applicant prior to the hearing.
- g. In the case of a withdrawal of an application, the Department of Planning and Zoning shall not accept for filing a new application for the same project for at least 90 days after withdrawal. The Board may waive this provision for good cause shown.

## **Article 5. Conduct of Proceedings**

### **5.1 General**

- a. All communications with the Board shall be made through an employee of the Department of Planning and Zoning designated as the liaison for the Board for each application or appeal. The employee so designated shall not be the employee with responsibility for the handling of the application, appeal or the matter within the Department.
- b. No applicant, appellant, other party or member of the public shall communicate directly with the Board or any member of the Board about a pending matter other than during a public hearing. This part b. does not apply to the Department's liaison to the Board.
- c. Arguments and offers of evidence on all applications and appeals shall take place at public hearings conducted during regular or specially scheduled meetings of the Board except for properly authenticated evidence attached to formal pleadings.
- d. The agenda for each Board meeting shall be prepared by the Department of Planning and Zoning, approved by the Chair and made available to the public at least 5 days before each meeting of the Board.
- e. The Chair may revise the agenda before and during each Board meeting in the interests of economy and expediency, unless to do so would cause significant prejudice to the applicant, appellant, other parties or members of the public. In so doing, the Chair may order that a hearing on any application or appeal be placed out of chronological order of the filing.
- f. The agenda for each Board meeting shall include:
  - Roll Call;

- Declaration of quorum;
  - Review of agenda;
  - Public hearings on applications and appeals;
  - New business;
  - Old business;
  - Approval of minutes;
  - Deliberations;
  - Signing Opinions and Orders;
  - Adjournment.
- g. All meetings of the Board, except those meetings allowed by the Code to be closed, shall be open to the public. As permitted by the Code, any member of the Board may request that the Board meet in closed session. Notice of the closed session shall be given at least ten days in advance of the closed session.
- h. Three members of the Board shall constitute a quorum for the conduct of business before the Board.
- i. A public hearing shall be recorded by audio or video recording.
- j. The Chair shall regulate the course of a public hearing.
- k. The Chair shall administer an oath or affirmation of truthfulness to each witness who provides testimonial or documentary evidence.
- l. The Chair may take any other lawful action during the course of a public hearing.

## **5.2 Parties, Representation and Standards of Conduct**

- a. The parties to an application or appeal include the Department of Planning and Zoning, the applicant and the appellant. An opponent, petitioner or objector who files with the Department of Planning and Zoning a notice of appearance and whose participation is approved by the Chair shall also be treated as a party. The notice of appearance shall state the name, address, telephone number and email address of the putative party, whether they are represented by counsel or an agent, and a statement of their interest in the case. The alderperson for the ward in which the property which is the subject of an application or appeal shall also be extended the rights of a party to participate in a hearing. This rule does not expand legal standing to those who do not have it under law.
- b. A party may be represented before the Board by an attorney or other agent who has filed with the Department of Planning and Zoning a form provided by the Department indicating the party or parties whom he or she represents, his or her name, address, email address, and telephone number.

- c. Every party appearing before the Board, their attorneys and agents, shall, prior to any hearing before the Board, review these Rules. The failure of a party, their agent or attorney, to comply with these Rules or to intentionally delay or obstruct the determination of the case, may result in the imposition of sanctions by the Chair, including but not limited to the adverse determination of their application or appeal and a prohibition from appearing before the Board in the future.

### **5.3 Deliberations**

- a. The Chair shall call for deliberations in accordance with the order for procedure or, in an uncontested hearing, the Chair may immediately call for deliberations and a vote on the application.
- b. An alternate member of the Board may participate in deliberations in a case, if he or she has heard or reviewed all of the evidence and arguments, but shall not vote unless fewer than five regular members vote in the case.

### **5.4 Continuances**

- a. At the request of a party or a member of the Board, for good cause shown, the Chair may continue a proceeding to the time of any regularly or specially scheduled meeting.
- b. If requested by any party or member of the Board, the Chair shall hear arguments in support of and opposition to a continuance. The determination of good cause shall take into account the gravity of the requestor's reasons for the request, previous requests for continuances, the hardship to other parties and the public and the schedules of the Board and its members.
- c. The Chair shall place on the record the reasons for granting or denying a continuance and shall set a date for a resumption of a proceeding at the time of any grant of a continuance.

### **5.5 Motions**

- a. The Chair shall rule on motions at a time that the Chair considers proper. Before ruling, the Chair may allow oral argument, admit evidence if permitted by the standard of review and allow questions by Board members.
- b. Before granting a motion that would finally dispose of an application or appeal, the Chair shall conduct deliberations with the members of the Board hearing the case.

### **5.6 Closure of the Record, Findings and Conclusions**

- a. At the conclusion of the parties' presentations and public testimony, if any, the Chair shall close the record in the case.

- b. The Chair may permit the record to remain open for a reasonable period of time to allow for the receipt of specific evidentiary matters and responses thereto, which shall be filed within a time set by the Chair.
- c. Following closure of the record, no further evidence may be included in the record.
- d. The Chair may allow additional briefing or argument after the record has been closed and before deliberations and voting.
- e. After the close of evidence, the Chair may permit or request the parties to submit proposed findings of fact and/or conclusions of law, which shall be made part of the record. Such proposed findings and/or conclusions shall refer only to evidence admitted before the close of evidence.
- f. Any evidentiary materials presented to the Board after the close of evidence, including public comments, shall not be received in evidence.
- g. Any evidence submitted in connection with an application, appeal or other proceeding shall be marked in a manner determined by the Chair and shall be retained in the files of the Department of Planning and Zoning until the opportunity for judicial review of the Board's decision has passed.

## **Article 6. Evidence**

### **6.1 Discovery**

- a. There shall be no discovery or compulsory disclosure of information except as may be provided in this Article and in Article 7 and Article 8 below.
- b. Prior to a public hearing, any Board member may request information or documentation from the Department of Planning and Zoning prior to the commencement of any hearing before the Board. Each Board member who does so and receives information or documentation shall provide copies to other members of the Board and ask the Chair to admit the information or documentation into the record of a proceeding. The Chair shall permit time for the review of the information or documentation by the parties. The Chair shall admit the information or documentation into the record of the proceeding, subject to objections.
- c. After consultation with the Chair, the Department of Planning and Zoning shall notify those representatives of the public agency or agencies that should be represented and be prepared to testify and give evidence at a public hearing.

## **6.2 Presentation of Documentary and Demonstrative Evidence**

- a. The parties shall present documentary evidence in a format suitable for presentation at a public hearing, which allows an understanding of the issues relevant to the application or appeal and which depicts a contextual relationship between the property which is the subject of the application and the surrounding neighborhood.
- b. All documents offered in evidence shall be marked as exhibits prior to being offered in evidence.
- c. The Chair shall admit evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, give effect to the rules of privilege recognized by law, and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.
- d. The Chair shall, exercising its discretion, relax the rules of evidence applicable to judicial proceeding.
- e. The Chair may place reasonable restrictions on the presentation of evidence and argument by the parties and the public including limiting the number of witnesses who may testify and the scope of their testimony and set time limits for testimony.

## **6.3 Examination of Witnesses**

- a. Board members may question the parties and their witnesses and testifying members of the public.
- b. The Chair may call and examine witnesses and introduce documentary evidence into the record.
- c. The Chair may exclude incompetent, irrelevant, immaterial or unduly repetitious testimony and permit a witness to adopt the prior testimony of another witness.
- d. All witnesses are subject to cross examination by adverse parties and may be subject to redirect and recross examination as permitted by the Chair.

## **6.4 Public Testimony**

- a. Except in matters where the only question before the Board is a question of law, the Chair shall allow members of the public to present testimony and documentary evidence to the Board. Such evidence shall be given the weight it is due under the circumstances.



- b. Members of the public shall indicate whether they testify on behalf of a party or other entity and, if requested by any Board member or party to the proceeding, shall provide documentation to that effect.
- c. The Chair may allow members of the public and the parties to ask questions of each other if the Chair believes that such questioning would be likely to result in the admission of relevant evidence.
- d. Any member of the public may submit written comments at any time prior to 12:00 noon on the day before the last session of the public hearing in a matter.
- e. Any member of the public who would like to provide written comments in support or opposition to an application before the Board shall make such statement on a form provided by the Department. The form shall contain the following:
  - Name and address;
  - Whether he or she supports or opposes the application;
  - The address of the property that will be affected if the application is approved;
  - The manner in which the property will be affected;
  - The legal or economic interest that he or she has in the project that would be affected.

### **6.5 Opinion Testimony**

- a. The Chair may accept opinion testimony from witnesses based on their personal knowledge of relevant matters. The Chair also may accept opinion testimony from persons with specialized training or experience in a particular field based on evidence admitted in the case or based on hypothetical situations where the Chair finds that the witness possesses relevant knowledge or experience and the testimony would be helpful in deciding the case. Board members may examine and the parties may cross examine such a witness regarding their qualifications.
- b. The Board does not formally qualify expert witnesses.

### **6.6 Site Visits**

- a. The board may vote to visit a site which is the subject of a proceeding before the Board.
- b. Before a site visit, the Chair shall place on the record the following rules which shall be observed at a site visit.
  - 1. Any applicant, appellant, other party or representative of any applicant, appellant or other party who does not intend to be present at a site visit shall place on the record of a proceeding a statement to that effect. Any such person who does not intend to attend a site visit may attend if circumstances change without notice to the Board or others.

2. All Board members, applicants, appellants, other parties and their attorneys or agents shall visit the site at the same time.
  3. No testimony shall be taken during a site visit.
  4. No discussions of the facts, applicable law and merits of the proceeding shall occur during a site visit.
- c. When a proceeding resumes after a site visit, the Chair shall place on the record the fact that the site visit occurred, the persons present, observations made, and that no such testimony or discussions took place. The Chair shall allow Board members and parties to place their observations about the site visit on the record. The Board shall entertain any suggested corrections to the record of the site visit by those who were in attendance.

#### **Article 7. Rules Applicable to Hearings on Applications**

- a. The applicant shall have the burden of demonstrating by a preponderance of the evidence that each of the criteria applicable to the application as set forth in the Code has been satisfied.
- b. The order of presentation in such cases shall be:
  - Introduction of the case by the Director;
  - Presentation by the applicant;
  - Cross examination by other parties;
  - Redirect and recross examination as permitted by the Chair;
  - Presentations by opposing parties;
  - Cross, redirect and recross examination;
  - Public testimony;
  - Rebuttal;
  - Recommendation of the Director.
- c. Unless otherwise provided in a scheduling order, at least fourteen days prior to a scheduled hearing, the Director shall provide to the Board, the applicant and any other party a copy of his/her recommendation with exhibits.
- d. Unless otherwise provided in a scheduling order, at least seven days prior to a scheduled hearing the applicant and any opposing parties shall provide to the Board and the other parties a list of witnesses that they intend to call at the hearing, a summary of proposed testimony and list of exhibits to be offered at the hearing.
- e. The offer of documentary or testimonial evidence by any party that has not been disclosed as required by these rules may be admitted into the record of the proceeding if, in the

discretion of the Chair, to do so would not cause significant prejudice to any person participating in the proceeding.

#### **Article 8. Rules Applicable to Hearing on Appeals**

- a. Appeals of a determination of the Director shall be based on a review of the record before the Director at the time of the determination. The appellant shall have the burden of demonstrating by a preponderance of the evidence that the determination of the Director should be set aside for one or more of the reasons referred to in the City Code.
- b. Generally, appeals will be decided without reference to evidence outside the record unless the Chair determines that the admission of additional evidence is necessary to a fair understanding of the basis for the Director's determination and not unreasonably prejudicial to the interests of other parties or the public.
- c. The order of presentation in public hearings on appeals shall be:
  - Presentation by the Director;
  - Presentation by the appellants;
  - Presentation by the applicants;
  - Presentation by any other party;
  - Public testimony, if any;
  - Rebuttal by parties to public comments
- d. Unless otherwise provided in a scheduling order entered in a particular case, the Director shall provide to the Board and each party within 15 days after the filing of an application for appeal a report summarizing the basis for his or her determination and attaching copies of any documents or other evidence he or she relies upon in making the determination. This shall constitute the record for the appeal. Should the applicant, appellant or any other party propose to offer any evidence beyond that contained in the record, they shall provide to the Board and each party at least 15 days before any scheduled hearing a list of witnesses, including expert witnesses, a summary of the proposed testimony and a list of documentary exhibits to be offered at the hearing. The party offering such evidence shall explain in writing why such evidence is appropriate. No such evidence shall be offered at the hearing without the prior approval of the Chair.

#### **Article 9. Voting and Decisions**

- a. The Board shall conduct deliberations and vote no later than 40 days after the conclusion of the public hearing on an appeal and 45 days after the conclusion of the public hearing on an application unless the Chair determines that cause exists to extend that time.

- b. The Board shall adopt a written decision within 60 days after a vote of the Board, unless the Chair determines that cause exists to extend that time. Any Board member may write or join in a dissenting opinion.
- c. The vote of at least a majority of the members of the Board hearing an application or appeal is necessary to support a decision.

#### **Article 10. Reconsideration**

- a. An applicant, appellant or other party may file a motion for reconsideration of a final decision of the Board.
- b. A motion for reconsideration shall be filed with the Department of Planning and Zoning no later than 10 days after issuance of the written decision of the Board.
- c. A motion for reconsideration shall state specifically the grounds in support of the motion.
- d. A motion for reconsideration shall be served upon the other parties to the case.
- e. A party opposing a motion for reconsideration shall file a written response no later than 7 days after service of the motion.
- f. Notice of a motion for reconsideration shall be given to the public in accordance with the requirements for notice of an original application or appeal.
- g. No evidence not of record at an original hearing shall be considered by the Board on reconsideration, unless the Chair determines that the new evidence could not reasonably have been presented at the original hearing.
- h. The Board, on its own motion made not later than 10 days following the issuance of the written decision, may decide to reconsider a vote on an application or appeal.
- i. No Board member shall vote on a motion for reconsideration unless the Board member participated in and voted on the original decision.
- j. Unless the Chair orders otherwise, neither the filing nor granting of a motion for reconsideration shall automatically stay the effect of a final decision.

#### **Article 11. Amendment**

- a. The Board may amend these Rules at any regular or special meeting of the Board, provided that the proposed amendment has been submitted in writing and has been placed on the agenda for public hearing.

- b. Amendments to the City Code that relate to the Board's Rules shall become, upon the effective date of the corresponding ordinance, amendments to these Rules.
- c. These rules shall be subject to the approval of the City Council as provided in the City Code.

**Article 12. Waiver of Rules**

- a. The Board may waive any of these Rules if there is good cause to do so, if the waiver will not substantially prejudice the rights of an applicant, appellant or other party to the case and if the waiver would not constitute a violation of law.

**Article 13. Annual Report**

- a. The Director of Planning and Zoning shall prepare an annual report of the Board for approval by the Chair.
- b. The annual report shall state the attendance of Board members, applications and appeals heard by the Board, corresponding decisions rendered by the Board, and recommendations for amendments to the Code or these Rules which would serve to clarify the functions of the Board and provide a continued improvement for performance of Board functions.

**Article 14. Effective Date**

- a. These rules will take effect June 29, 2021.

Adopted June 1, 2021