` BOARD OF APPEALS
City of Rockville, MD
RULES OF PROCEDURE
July 7, 2011 Draft

I. Composition

A. Number. The Board consists of four (4) members, including three voting members and one (1) alternate member who is empowered to sit on the Board and vote in the absence of any member of the Board. In the absence of the alternate, the Mayor and Council may designate a temporary alternate. All members of the Board and the alternate shall be residents of the City of Rockville.

B. Appointment. Members shall be appointed in accordance with the Annotated Code of Maryland, Article 66B.

C. Term. The term of each member is set forth in the Annotated Code of Maryland, Article 66B.

D. Chair. The Board shall elect a Chair from one of its appointed members to serve for a term of one (1) year. The Chair shall preside at hearings and meetings of the Board and call special meetings of the Board.

In the absence of the Chair, a member shall be designated by the Chair, or in the absence of such designee, a member selected by the Board shall preside.

E. Staff. The Department of Community Planning and Development Services serves as staff to the Commission, and provides professional and clerical support. The staff shall maintain an electronic transcript (audio or video recording) as documentation of the discussion at the meeting for one year. Staff shall prepare written minutes of all public meetings and hearings for approval by the Board.

II. Powers and Duties

The powers and duties of the Board are set forth in the Annotated Code of Maryland, Article 66B and the Laws of Rockville.

III. Filing of Applications

A. An application for a special exception or variance may be filed at any time during normal business hours.
B. Administrative appeals to the Board must be filed within thirty (30) working days after the date of the administrative decision from which an appeal is taken.

C. A new application or appeal requesting the same action or relief as an application previously denied, dismissed with prejudice, or allowed to be withdrawn with prejudice by the Board, and regarding the same property, may not be resubmitted for one year after the original action has elapsed.

D. Any application for special exception or variance, withdrawn without prejudice or dismissed without prejudice, may be re-filed at any time.

E. No application or appeal concerning property, which was the subject of a previously denied application, and requesting the same relief, shall be granted except upon a finding of evidence of changed conditions or mistake. This does not apply to motions for applications for reconsideration under Section VIII.

F. Applications for special exceptions or variances seeking different relief or a different use with regard to property, which has been the subject of a previous application, may be submitted at any time and will be decided based on the evidence presented.

G. No application or appeal shall be heard while a previous appeal requesting the same action or relief with respect to the same property is pending in any court.

H. All applications must be filed by the owner of record of the land which is involved in the application; or if filed by another person, must be accompanied by written authorization from the property owner.

I. An application for modification of a term or condition may be filed at any time during normal business hours..

J. All applications, appeals, and correspondence shall be filed with the Department of Community Planning and Development Services.

IV. Notices

The calendar of meeting dates, and corresponding filing deadlines, shall be maintained by the Department of Community Planning and Development Services, and shall be available for public inspection during normal business hours. The Board's agenda shall be available in City Hall and posted on the City's website as soon as practicable prior to the meeting. Notice will be posted at City Hall on the day of each meeting.

V. Preparation of Cases

A. When an application is filed, it is to be promptly referred to the Planning Commission if the Zoning Ordinance requires Planning Commission review. Application requests for residential zoning variances will generally be heard at the Board's first regularly scheduled public hearing that occurs a minimum of forty (40) working days following the filing of the application with the Department of Community Planning and Development Services.

Application requests for nonresidential zoning variances and special exception requests will generally be heard at the Board's first regularly scheduled public hearing that occurs a minimum of sixty (60) working days following the filing of the application with the Department of Community Planning and Development Services.

With all filings, the Chair may, for scheduling reasons or other good cause shown, shorten or lengthen said time periods.

B. Staff will process and analyze each request in accordance with the applicable provisions of the Zoning Ordinance and make a recommendation for Board action.

C. The Planning Commission shall review each application and make a recommendation to the Board, as required by the Zoning Ordinance. Any recommendation shall be in writing and transmitted to the Board and placed in the application file at least eight (8) days prior to the Board's public hearing.

D. The staff shall furnish the Board with briefing materials, prepared by the Planning staff, at least eight (8) days before each scheduled meeting. The briefing materials shall contain the recommendation of the Planning Commission, if applicable, the recommendation of Planning staff, and other pertinent papers or exhibits relating to each case to be heard at the hearing for which the brief book is prepared. In order for correspondence to be included in the Board's briefing material, it must be submitted to the Department of Community Planning and Development Services no later than ten (10) days prior to the scheduled meeting.

E. The staff, with the concurrence of the Chair, shall prepare an agenda, which will be available to the Board and the public approximately eight (8) days before each scheduled meeting. Items may be placed on future agendas by the Chair or at the request of two Board members.

VI. Hearings and Meetings

A. Time and Place of Meetings. All meetings and hearings of the Board are open to the public. The Board generally holds its regular meetings one Saturday per month at 9:30 a.m., in the Rockville Mayor and Council Chambers. If there are no public hearings scheduled and no business to be conducted, there may be no meeting scheduled in a given month. There is usually no meeting scheduled in the month of August. Special meetings are held upon the call of the Chair or at other times determined by the Board. Special meeting require reasonable notice to each Board member and the public. Dates of public hearings are posted on the City's website and also on signs on the properties, which are the subject of the special exception and variance. Notices are sent by mail as required by law.

B. Quorum. A minimum of two members of the Board shall be required to take action on all applications. The Chair has the authority to make or second motions.

C. Public Hearings. The applicant or moving party or respective representative must be present at all public hearings and carries the burden of proof. Failure to appear may cause the matter to be dismissed with prejudice.

D. Continuance of Hearing. Hearings may be continued from time to time. The time and place of the continued hearing must be publicly announced at the time of the continuance. If scheduling of the continued hearing cannot be made at the time of the continuance, then notice shall be provided as required by the Zoning Ordinance.

E. Order of Business. Meetings of the Board will generally be conducted in the following manner:

1. Public Hearings, Board Discussion and Decisions of Cases
2.
3. Old Business
4. New Business
5. Approval of minutes.

Adjournment

F. Procedure. At a hearing, the order of presenting testimony shall be as follows:

1. Staff presentation of report and recommendation
2. Testimony of representative of other Boards or Commissions
3. Applicant Testimony
4. Testimony in support of the application
5. Testimony in opposition to the application.
6. Additional testimony relevant to the application.
7. Rebuttal testimony of the applicant or appellant.
8. Closing arguments, if any.

At the conclusion of the testimony of each witness, opposing parties may cross-examine under such terms and conditions as the Board may set. Board members may question the witness at any time. Public officials, by leave of the Board, may make statements in appropriate cases.

The rules of evidence applicable to the courts of Maryland shall apply generally, but may be relaxed by the Board, if in its judgment; the ends of justice may require it. The Board shall conduct hearings in a manner best calculated to afford all parties an opportunity to present their cases. The Board may make such rulings as necessary to conduct the hearing in an efficient and orderly manner including, but not limited to, imposing time limitations and excluding irrelevant, repetitive, and/or unreliable evidence. Witnesses shall testify under oath whenever required to do so by the Board.

G. Parties-Appearance. A Party of Record to a proceeding before the Board shall be any individual, group, or entity who either personally or through an agent, enters an appearance through direct testimony at the public hearing or by addressing a written communication regarding the substance of an application or appeal, to the Board while the record is open. A Party of Record presenting expert testimony must provide a list of expert witnesses and a summary of their testimony along with a resume setting forth the witness' qualifications. If a witness has qualified as an expert before this Board within two years before the hearing, a resume is not required.

H. Identification of parties. All persons appearing, testifying, or submitting evidence shall identify themselves (name, address, and their interest in the proceedings) and any person or entity they represent.

I. Petitions. Petitions filed in a particular case and containing more than five names hall set forth the name and address of an agent who is to receive a copy of the decision and other relevant communications on behalf of the signers of the petition. An individual who signs a petition shall not be considered a Party of Record just by signing a petition.

J. Decisions. The Board shall grant or deny each application or appeal. Two votes are required to approve or deny an application or grant an appeal. Failure to obtain two votes shall have the effect of a denial. A split vote in a two-member quorum is a denial. Each grant or denial shall set forth a summary of facts found and reasons for the decision. The Board may impose conditions on a grant of a special exception or variance, and may modify previous administrative actions.

K. Notice of Decision. The Board of Appeals shall provide written notice from the Chief of Planning of its decision and findings on any petition for the grant of a variance, special exception, or appeal application by first class mail to the petitioner or applicant, the Planning Commission, and any Party of Record. In certain cases and when instructed by the Board, staff shall prepare a written decision reflecting the Board's findings for Special Exception applications. Whenever an appearance is made before the Board through an agent (an attorney or other party), the Board shall provide written notice of the decision to said agent who shall be responsible for notifying the parties on whose behalf the agent acted. The Board shall also provide written notice of its decision to any person who requests a copy of the decision. A clerical error or technical correction to a written decision may be made at any time without prior notice or hearing. A copy of the corrected decision must be sent to all persons who received the original opinion with an explanation of the correction. A decision is not considered final agency action for appeal purposes, until such time as the 10-day period to request reconsideration has lapsed and no request for reconsideration has been filed. The Chief of Planning will provide written notice that the decision has become final. The 30-day period to appeal in accordance with the Maryland Rules, Title 7, Chapter 200 shall run from the date of the notice.

L. Record. An electronic transcript (audio or video recording of the hearing) shall be kept by a recording device, and the media shall be preserved as a pubic record of the City of Rockville for a period of one year. A copy of the recording can be provided for a fee.

M. Minutes. Written minutes approved by the Board shall be kept by the staff showing the disposition of all cases and shall show the vote of each member upon each question, or, if the member is absent or fails to vote, the minutes shall indicate that fact. The minutes shall summarize the facts and the reasons for the decision in each case, and shall be public records and available for inspection.

VII. Withdrawal of Application

Requests to withdraw an application shall be made orally before the Board at the time of the public hearing or in writing at any time before the final decision of the Board. Granting of any such withdrawal shall be at the discretion of the Board, and may be with or without prejudice. If withdrawal is with prejudice, provisions of Section IIIc. shall apply to new applications.

VIII. Reconsideration

A. Request to Reconsider - A request for reconsideration of a decision of the Board must be filed by a Party of Record within ten (10) days after the date upon which the written decision was made by the Board. Such request must be in writing and must set forth specifically all grounds for reconsideration including mistake of fact or law, inadvertence, surprise, fraud, or other good cause.

The party or agent submitting a request for reconsideration (Requestor) shall also give written notice to all Parties of Record by hand delivering or mailing such notice on the same day that the request for reconsideration is filed with the Board. Within five (5) days of filing the request for reconsideration with the Board, a copy of such notice and a certification that the notice was provided to all Parties of Record must be filed with the Chief of Planning Parties of Record shall have seven (7) days from the date of the notice to submit written comments regarding the request.

At the next possible meeting, the Board shall either grant or deny the request. Parties of Record need not be present at such meeting. The Board may, however, question staff or any party then present to clarify points raised in the written request; otherwise testimony will not be heard. The Board may grant a request for reconsideration if it finds mistake of fact or law, inadvertence, surprise, fraud, or other good cause, and must state its reasons for such approval on the record.

If the Board grants the request, it shall schedule a hearing on the matters to be reconsidered. It shall set the date of such hearing during the meeting at which it granted the request, and Planning staff shall notify the Requestor within five (5) days thereafter of the date of the hearing. The Requestor shall notice all Parties of Record

within fifteen (15) days of the date of the hearing. If the Board does not grant the request, Planning staff shall notify the Requestor as soon as possible.

B. Motion to Reconsider - The Board may reconsider a decision on its own motion A motion to reconsider may only be made by a member who voted in the majority for the original decision. In considering a motion to reconsider, no public hearing is required. The Board may grant a motion for reconsideration if it finds mistake of fact or law, inadvertence, surprise, fraud, or other good cause, and must state reasons for such approval on the record.

If the Board approves such a motion, it shall schedule a hearing on the matters to be reconsidered. It shall set the date of such hearing during the meeting at which it granted the motion. Planning staff shall notify all Parties of Record within fifteen (15) days of the date of the hearing.

C. Effect of the Board's Decision on a Request to Reconsider or Motion to Reconsider - If the Board approves a request to reconsider or a motion to reconsider, such approval shall deem the original decision void. If the Board denies a request to reconsider or a motion to reconsider, the original decision shall become final agency action. The Chief of Planning will provide written notice that the decision has become final. The 30-day period to appeal in accordance the Maryland Rules, Title 7, Chapter 200 shall run from the date of the notice.

D. Hearing on Matters Reconsidered - If the Board grants a request to reconsider or approves a motion to reconsider, it shall conduct a hearing on the matters reconsidered. The scope of the hearing must include the reason the Board cited for reconsideration of the decision and any other issues that the Board deems to be relevant. At least ten (10) days before the hearing, planning staff shall post the following on the City's web site: (a) the Commission's decision to reconsider its decision; (b) the date of the hearing on the reconsideration; and (c) a summary of the reasons for the reconsideration.

F. Effect of the Board's Decision After Hearing: If after a hearing, the Board determines that it will not change its original decision, the original decision shall be reissued and become final agency action. The appeal period shall run from the date of final agency action. If after a hearing, the Board determines that it will change the original decision; the original decision shall be revised based on such change, and issued as final agency action. The Chief of Planning will provide written notice that the decision has become final. The 30-day period to appeal in accordance the Maryland Rules, Title 7, Chapter 200 shall run from the date of the notice.

IX Modification of a Variance

A. Definitions

1. De Minimis modification. A modification that does not substantially change any express term or condition of a variance or any significant element of the plan upon which the variance was granted.

2. Modification of a term or condition. A modification that changes:

   a. any express term or condition or a variance imposed by the Board; or
   b. any significant element of the plan upon which the variance was granted.

3. Substantive modification. A modification that increased the extent of the variance.

B. De Minimis Modifications

The Chief of Planning may permit a de minimis modification where the Chief of Planning finds that the proposed change would not have affected the Board's decision in granting the variance or in setting terms or conditions of the variance.

C. Substantive Modifications

An application for a substantive modification shall be treated as, and shall be subject to, all procedures and requirements of an application for a new variance.

D. Modification of a Term or Condition

1. An application for modification of a term or condition to a variance shall be processed in accordance with the Rules of Procedure applicable to variances, except as provided below.

2. The Board's review shall be limited to the effect of the proposed modification. The merits of the previously granted variances shall not be reopened.

3. A staff report shall not be mandatory in connection with an application for a modification of a term or condition, but may be prepared by staff, if staff determines that a report is warranted.

X. Review of Decisions and Enforcement of Conditions

The Board has the authority to review special exceptions from time to time to ascertain whether all conditions imposed are being met.

XI. Appeals to the Courts

Appeals from decisions of the Board shall be taken to the Circuit Court for Montgomery County, Maryland in accordance with the provisions for appeal contained in the Maryland Rules, Title 7, Chapter 200, as now constituted and as they may hereafter be amended.

XI. Rules of Procedure

The rules of procedure may be amended at any meeting of the Board by a majority vote of the Board, provided that notice of said proposed amendment is given to each member in writing at least two weeks prior to said meeting. Parliamentary procedure in a meeting of the Board of Appeals is informal. However, if required to keep order, the Chairman may apply Robert's Rules of Order to resolve any parliamentary issue not specifically covered by these rules.

XII. Rules not Jurisdictional

These Rules of Procedure do not constitute jurisdictional requirements. Failure of the Board, its staff, or any party to comply with any provision of these Rules of Procedure shall not invalidate any otherwise valid decision or action of the Board.

Adopted February 9, 1975
Amended November 5, 1977
Sections VIII and IX Amended May 6, 1978
Sections VIII and IX Amended August 14, 1984
Amended September 7, 1985
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