

BOARD OF APPEALS
City of Rockville, Maryland

EX PARTE COMMUNICATIONS GUIDELINES
Adopted March 8, 2014

Ex parte communications are improper and prohibited in connection with quasi-judicial proceedings. An ex parte communication is a communication by either a party or an interested person to a member of the Board of Appeals (Board) outside the public hearing, in a quasi-judicial proceeding.

Quasi-judicial proceedings before the Board include Special Exception applications and Variance applications. Ex parte communications addressing these applications are prohibited since 1.) the determinations the Board makes in quasi-judicial proceedings affect the rights of individuals and, as such, those individuals are entitled under the law to hear, respond to and dispute the communications being made; and 2.) the Board's decisions in quasi-judicial proceedings must be based on information that is "on the record" and made available to all parties to the proceeding.

Ex parte communications include communications that are written or oral and can be by telephone call, face-to-face contact, email, regular mail, or any other type of communication directed either to a single member of the Board or to some or all members of the Board. Citizens and interested persons may, however, submit written testimony regarding pending quasi-judicial matters directly to City planning staff for inclusion in the record.

Board members should do their best to avoid ex parte contacts. However, recognizing that there will be situations where ex parte contacts can occur, if a Board member is contacted by someone who wishes to discuss a matter which is the subject of a quasi-judicial proceeding, that Board member should respectfully advise the person that their interest in the project is appreciated, but in order to consider their comments, as well as to permit other members of the Board to consider their comments, they should either appear and testify at the public hearing or submit their comments in writing. The Board member should further explain that in order for the Board to base its decision on the information provided, it needs to be part of the public record.

For situations in which a member of the Board inadvertently or directly receives an ex parte communication about a pending quasi-judicial matter, the member must disclose and describe the communication to the rest of the Board at the earliest opportunity, during the Board's hearing on the matter. In certain circumstances, an ex parte communication may require recusal of the member of the Board who received the communication from the final decision on the matter. For example, recusal may be appropriate if the member felt that based on the communication he or she could not make a fair and impartial determination on the matter and/or in circumstances where a party to the proceeding does not have the ability or time to properly respond to the communication. If a Board member has engaged in an ex parte communication, that Board member must determine whether to recuse him or herself from any discussion or action taken on the matter and communicate that decision to the Board at the earliest opportunity.