

**RULES OF PROCEDURE
of the
BOARD OF APPEALS HEARING EXAMINER**

Article I - Authority and Purpose

1.1. Authority. These Rules of Procedure are adopted pursuant to § 16.303 of the Howard County Code.

1.2. Purpose. The purpose of these rules is to set out the procedures by which hearings will be conducted by a Board of Appeals Hearing Examiner.

1.3. Definitions. As used in these rules, the following terms have the meanings indicated:

(a) “Administrative assistant” means the administrative assistant to the Board as defined in §2.201(f) of the Board’s Rules.

(b) “Board” means the Board of Appeals.

(c) “Board’s Rules” means the Rules of Procedure for the Howard County Board of Appeals as set forth in subtitle 2 of Title 2 of the Howard County Code.

(d) “Clerk” means the clerk of the Board of Appeals as defined in §2.201(d) of the Board’s Rules.

(e) “DPZ” means the Department of Planning and Zoning for Howard County, Maryland.

(f) “Hearing examiner” means a hearing examiner appointed by the County Council and authorized to hear cases in accordance with §16.302 et seq. of the Howard County Code.

Article II - Staff

2.1. Clerk. The clerk will serve as the custodian of the records of proceedings of the hearing examiner and will accept petitions, motions and correspondence to the hearing examiner, and will maintain the docket in each case.

2.2. Administrative Assistant. The administrative assistant will perform administrative duties as assigned by the hearing examiner.

Article III - Petitions

3.1. **Filing of Petitions.** Petitions must be filed with the clerk in the manner prescribed in §2.202(a) of the Board's Rules.

3.2. **Payment of Fees.** At the time the petition is filed with the clerk, the petitioner must pay the filing and/or hearing fees in accordance with the current schedule of fees adopted by resolution of the County Council. Checks must be made payable to the Director of Finance of Howard County.

3.3. **Dismissal.** The hearing examiner will dismiss a petition if the hearing examiner lacks jurisdiction to hear the petition.

Article IV - Notice to the Public

4.1. **Public Notice.** The petitioner, at the petitioner's expense, must provide public notice of the date, time and place of a hearing in accordance with the requirements of §2.203 of the Board's Rules.

4.2. **Responsibility for Assuring Compliance.** The petitioner is responsible for assuring compliance with the public notice requirements of §2.203 of the Board's Rules. If any question arises regarding compliance with the public notice requirements, the burden is on the petitioner to prove compliance.

4.3. **Substantial Compliance.** If the petitioner has failed to comply with the public notice requirements, the hearing examiner may nonetheless proceed with the hearing if the hearing examiner determines that:

(a) the petitioner has made a good faith effort to comply with the public notice requirements; and

(b) the petitioner has substantially complied with the public notice requirements.

4.4. **Good Faith Effort.** If the petitioner has failed to substantially comply with the public notice requirements, but has made a good faith effort to comply, the hearing examiner will give the petitioner a reasonable opportunity to correct the non-compliance.

4.5. **Failure to Comply.** If the hearing examiner determines that the petitioner has not made a good faith effort to comply with the public notice requirements, the hearing examiner will dismiss the petition.

Article V - Schedule of Hearings

5.1. **By Hearing Examiner.** The hearing examiner will schedule all hearings, including preliminary hearings and continuations, as the hearing examiner deems appropriate.

5.2. **Notice of Hearings.** In addition to the public notice requirements of Rule 4.1, notice of a hearing will be posted at the Board's office in the George Howard Building one day prior to the hearing.

5.3. **Postponements.** A request for a postponement of a hearing should be received by the clerk in writing before the scheduled date of the hearing. A postponement will be granted only for compelling circumstances. If a postponement is granted, the party requesting the postponement must provide public notice of the new hearing date and time in accordance with the requirements of §2.203 of the Board's Rules.

5.4. **Continuances.** If a case has not been concluded at the initial hearing, before continuing the hearing the hearing examiner will announce the day and time that the case will be continued. If no new hearing date is set at the time of the continuance, the clerk will send written notice of the new date and time to all parties of record at least 10 days prior to the new hearing date. It will not be necessary for the petitioner to comply with the public notice requirements of §2.203 of the Board's Rules for a continued case.

Article VI - Parties

6.1. **Parties - In General.** Except for administrative appeals described in Rule 6.2, any individual or any other legal entity may become a party to a proceeding before the hearing examiner by:

(a) Providing the name, address and signature of the individual or entity and the legal entity's duly authorized representative on a sign-up sheet provided by the hearing examiner;

(b) Testifying before the hearing examiner and providing the name and address of the party and/or legal entity; or

(c) Delivering a letter to the clerk, received before the close of the record in the case, indicating that the individual or entity is an interested party to the matter before the hearing examiner and providing the party's name, address and signature. Such letter may not be considered for any substantive content and will be received into evidence only for identification of parties to the case. In addition, petitions for or against a matter may not be used for purposes of conferring party status on those individuals signing the petition under this provision.

6.2. **Parties to Administrative Appeals From Notice of Violation.** Parties to an

administrative appeal from the issuance of a notice of violation of county laws or regulations are limited to the petitioner and the administrative agency issuing the violation notice.

6.3. Representatives of Associations. An individual representing any association must substantiate that he or she is authorized to speak for and present the views of that association. The authorization may consist of a duly adopted resolution of the association signed by the president or attested by the secretary. The individual testifying must state the number of members in the association and its geographic boundaries.

6.4. Right to Counsel. Any party may appear in person or be represented by counsel. A person compelled to appear before the hearing examiner may also be represented by counsel. Before the hearing begins the attorney must give the hearing examiner written notification of the names and addresses of individuals he or she will be representing and his or her own name, address, and telephone number.

6.5. List of Parties. The hearing examiner will prepare a list of all parties of record and their representatives, which will be made part of the record of the case.

Article VII - Pre-hearing Matters

7.1. Ex Parte Communications. Except as otherwise provided in these rules, outside of a hearing the hearing examiner may not communicate with any person who is (or who may become) a party or receive any communication from any such person regarding any matter relevant to the merits or the law of a pending or proposed petition. Any request for information concerning a pending or proposed petition should be directed to the administrative assistant.

7.2. Correspondence. Any party filing written correspondence with the hearing examiner must certify in writing that a copy of the correspondence has been served to all parties to the case or to their designated representative. If the correspondence is not accompanied by the written certification, the hearing examiner will not consider it and will return it.

7.3. Subpoenas. Any person requesting the hearing examiner to issue a subpoena must submit a written request to the clerk at least twenty-one (21) days before the initial hearing. The request must contain the name and address of the person to be subpoenaed, a brief proffer as to the content and relevance of the person's expected testimony, and a list of all documents to be brought to the hearing by the subpoenaed person. If the request is granted by the hearing examiner, the subpoena will be issued by the hearing examiner at least fourteen (14) days prior to the date of the hearing. The person requesting the subpoena will be responsible for arranging service of the subpoena at least seven (7) days prior to the date of the hearing. The person serving the subpoena must certify in writing that the subpoena was served personally or by certified mail.

7.4. Pre-submission of Technical Reports. Any petitioner or proponent wishing to submit a technical report or other similar documentary evidence to the hearing examiner must file a copy of the report with the clerk at least thirty (30) days prior to the date of the initial hearing. Any opponent or respondent wishing to submit a report or other similar documentary evidence to the hearing examiner must file a copy of the report with the clerk and send one copy to the petitioner at least ten (10) days prior to the date of the initial hearing. If technical reports are filed late, the hearing examiner may postpone the hearing to allow the other parties time to review the report, or take any other course of action as determined by the hearing examiner. Even if the report or other documentation is timely filed, the hearing examiner may postpone the hearing and require additional copies of the material for technical staff review.

7.5. Preliminary Motions. A party may request the hearing examiner to address a preliminary matter prior to the date of the initial hearing by filing the request as a motion to the hearing examiner and certifying that a copy was provided to all persons known to have an interest in the case, including but not limited to the Petitioner, the property owner, the administrative agency, or any person entitled to written notification under §2.203 of the Board's Rules. The certification must state "any person interested in responding to this motion must file a written response with the hearing examiner within fifteen days of the date that the motion was filed." The hearing examiner may rule on the motion at any time after a response is filed or fifteen days after the filing of the motion.

7.6. Pre-hearing Conferences. Upon the request of a party or at the hearing examiner's own initiative, the hearing examiner may hold a pre-hearing conference for the clarification or simplification of issues. The conference will be held at the time and place given in the public notice for the case.

7.7. Site Visit. The hearing examiner will view the subject property before the hearing begins.

Article VIII - Conduct of Hearings

8.1. Open to Public. The public is invited to attend hearings. Any individual attending a hearing will maintain order and refrain from disturbing the orderly process of the hearing. The hearing examiner may clear the room of disruptive individuals or recess the hearing.

8.2. Signing Up to Testify. Any person unable to attend the initial hearing must submit, no later than the day of the initial hearing, a written request to testify. If the hearing is continued, only the individuals who have timely submitted a written request, signed the roster prior to the end of the petitioner's case, or are called by the petitioner in rebuttal, will be permitted to testify.

8.3. Recording of Hearing. Each hearing will be recorded. The administrative assistant will maintain a copy of the tape recording for at least two years after the hearing examiner's

decision is issued. Transcripts of testimony will not be made.

8.4. Oath. Any person testifying before the hearing examiner must give his or her name and take the following oath: “Do you solemnly promise to speak truthfully in the testimony you are about to give?”

8.5. Order of Hearing. The ordinary, but not mandatory, order or procedure for the conduct of a hearing and the presentation of evidence, subject to reasonable changes agreed to by the parties or as ordered by the hearing examiner, is as follows:

- (a) Disposition of outstanding preliminary matters.
- (b) Petitioner’s presentation:
 - (i) Testimony of witnesses.
 - (ii) Questioning of witnesses by opposition and hearing examiner.
- (c) Opposition’s presentation:
 - (i) Testimony of witnesses.
 - (ii) Questioning of witnesses by petitioner and hearing examiner.
- (d) Petitioner’s rebuttal presentation.

Article IX - Evidence

9.1. Rules of Evidence. The hearing examiner is not bound by the technical rules of evidence, but will consider and give appropriate weight to any relevant evidence as is commonly accepted by reasonable and prudent persons in the conduct of their affairs.

9.2. Evidence That Will Be Excluded. The hearing examiner will exclude or refuse to hear evidence that is irrelevant, unreliable, or unduly repetitious.

9.3. Exhibits. Documentary evidence may be submitted in the form of copies, excerpts, photographic reproductions, or by incorporation by reference. Exhibits and plats admitted into evidence may not be mounted and must be folded to a maximum size of nine inches by fourteen inches. An exact duplicate of the exhibit may be mounted and used for presentation. Exhibits will be marked and held in the record. Parties are encouraged to pre-mark and submit exhibits before or at the beginning of the hearing. A party submitting exhibits must provide at least one copy for the opposition.

9.4. Amendments to Petition. If a petitioner proposes to amend a petition during the course of the proceedings, the petitioner must submit the amendment as an exhibit.

9.5. Substantive Amendments. If the hearing examiner determines that an amendment to a petition is substantive, i.e., the amendment proposes a use that is likely to adversely impact vicinal properties, then the hearing examiner will suspend the hearing for at least three (3) weeks. At least two (2) weeks prior to the rescheduled hearing, the petitioner must send written notice of the amendment and of the date, time, and place of the next hearing to all adjoining property owners, and must file an affidavit of written notification with the clerk. In addition, the petitioner must post the property with notice of the date, time, and place of the next hearing for at least 10 days immediately before the next hearing in accordance with §2.203(b) of the Board's Rules. The hearing examiner may request that DPZ review and make recommendations on the amendment.

9.6. Material Deemed Part of Record. For each case, the petition, the DPZ technical staff report, any previously submitted technical reports, the Howard County Zoning Regulations, the Howard County General Plan, and all relevant laws and regulations will be deemed to be part of the record without necessity of formal introduction.

9.7. Privileged Communications. The hearing examiner will give effect to the rules of privileged communications, such as the attorney-client privilege, or other communications made in professional confidence and recognized as privileged by law.

Article X - Decision

10.1. Evidence to be Considered. The hearing examiner may only consider the evidence in the record when making a decision; however, the hearing examiner may use his or her experience, expertise, and knowledge of the property and the area in making a decision.

10.2. Burden of Proof. Unless otherwise provided by law, the burden of proof in a case heard by a hearing examiner is as follows:

(a) In all cases except those described in (b) and (c), the petitioner must show by a preponderance of evidence that the petitioner is entitled to the relief requested.

(b) In an appeal of an administrative agency's issuance of a violation of a County law or regulation, the agency must show by a preponderance of evidence that the respondent has violated the law or regulation in question. The respondent must prove all affirmative defenses, such as nonconforming use, by a preponderance of the evidence.

(c) In any other appeal of an administrative agency decision, the petitioner must show by substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law.

10.3. Legal Memoranda. The hearing examiner may, at his or her discretion, require the parties to submit legal memoranda to assist in the hearing examiner's decision.

10.4. Referral to DPZ. The hearing examiner may at any time before making a decision refer an issue in a case to DPZ for the purpose of clarifying or updating the record. DPZ's response will be in writing. Before making a decision, however, the hearing examiner will afford all parties an opportunity to comment on or challenge DPZ's response.

10.5. Hearing Examiner's Action. The hearing examiner may grant or deny the petition, grant the petition with modifications or conditions, or, in the case of an administrative appeal, remand the case to the agency for further proceedings.

10.6. Form of Decision. The hearing examiner may announce his decision at the conclusion of a hearing or take the matter under advisement for later decision. In either instance, the hearing examiner's decision is not final until made in writing and delivered to the clerk. The decision will contain findings of fact, conclusions of law, and an appropriate order, and be signed by the hearing examiner. If a petition was substantively amended during the proceedings, the hearing examiner's decision will identify the amendments.

10.7. Time for Issuing Decision. The hearing examiner will endeavor to issue a written decision within 30 days after the conclusion of the hearing.

10.8. Mailed to Parties. When the clerk receives the decision, the clerk will promptly mail copies to all parties of record or their designated representatives.

Article XI - Reconsideration

11.1. Right to Request. Any party to a case may request that the hearing examiner reconsider the decision in the case.

11.2. Procedure. A request for reconsideration must be made in writing and submitted within 15 days after the issuance of the decision. The request must state the reasons for the request, and may include a request for a hearing and a request to suspend the decision. The party making the request must send a copy of the request to each party and certify that a copy has been sent to each party.

11.3. Response. Any party may file a written response to the request for reconsideration within 10 days of the filing of the request.

11.4. Hearing. At the discretion of the hearing examiner, a hearing may be held on the request for reconsideration. The hearing examiner will not consider new or additional evidence unless the evidence could not reasonably have been presented at the original hearing.

11.5. Standard for Reconsideration. The hearing examiner will revise the decision only upon a finding of mistake of fact or mistake of law.

11.6. Decision. The hearing examiner will issue a written decision on the request for reconsideration. If the hearing examiner decides to deny the request, the hearing examiner need not wait to receive responses to issue the decision. The hearing examiner may reverse the original decision, modify it, or impose additional conditions. The clerk will mail a copy of the reconsideration decision to each party of record.

11.7. Time for Appeal. The filing of a request for reconsideration does not suspend the time for filing an appeal to the Board of Appeals unless the hearing examiner has suspended the decision. Once an appeal to the Board has been taken, the hearing examiner no longer retains jurisdiction to reconsider or suspend a decision.

Article 12 - Appeals

12.1. Appeals to Board. A person aggrieved by a decision of the hearing examiner may appeal it to the Board within 30 days of the issuance of the decision. An appeal must be submitted to the clerk on a form provided by the clerk.

12.2. Payment of Fees. At the time the appeal petition is filed with the clerk, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees adopted by resolution of the County Council.

12.3. Forwarding of Record. Upon the filing of an appeal, the clerk will promptly forward the original petition and any amendments, the DPZ technical staff report, the list of parties of record, and the hearing examiner's decision to the Board's file.

12.4. Notice to Parties. Upon the filing of an appeal, the clerk will promptly notify all parties of record of the filing of the appeal.

12.5. Appeal of Amended Petition. If an appeal involves a petition that was substantively amended by the petitioner during the hearing proceedings, the case will proceed on the amended petition unless:

(a) if the appeal is taken by the original petitioner, the appeal petition indicates that the original petitioner elects to proceed on the original petition; or

(b) if the appeal is taken by another party, the original petitioner notifies the Board in writing within 10 days after the date of notice of the appeal that the original petitioner elects to proceed on the original petition.

12.6. DPZ Report on Amended Petition. If an appeal proceeds on the amended petition, DPZ will prepare and submit to the Board a technical staff report of its findings and recommendations concerning the amendment.

12.7. Public Notice. The person filing the appeal will bear the expense of providing notice and advertising the hearing in accordance with §2.203 of the Board's Rules.