

HOWARD COUNTY CODE

RULES OF PROCEDURE OF THE BOARD OF APPEALS

SECTION 2.200. GENERAL.

These rules are in addition to the requirements of section 501 of the Howard County Charter; subtitle 3, "Board of Appeals," of title 16 of the Howard County Code; and the Howard County Zoning Regulations. For further information and assistance, applicants may consult the Department of Planning and Zoning. [See Appendices A and B for cross-referenced requirements.]

SECTION 2.201. ORGANIZATION.

(a) Chairperson; Vice Chairperson. Each January the members shall designate one member to be a chairperson and one member to be a vice chairperson. The vice chairperson shall assume the chairperson's duties if the chairperson is absent or incapacitated. The chairperson shall schedule hearings and meetings, issue summonses and subpoenas, and rule on procedural matters.

(b) Quorum. A majority of the Board of Appeals, i.e. at least three members, constitutes a quorum. A quorum shall be present before the Board can hold a meeting or hearing.

(c) Voting. The same members of the Board who were present at the hearing shall make the decision on the case, provided that any member who was absent during any portion of the hearing or who was appointed after the hearing commenced shall be considered present for voting purposes and may vote if the member certifies in writing that the member reviewed all of the evidence submitted and listened to a recording of the portion of the hearing for which the member was not present. A decision shall have the concurrence of the majority of all members of the Board. A member who was absent during any portion of the hearing or who was appointed after the hearing commenced shall vote as provided in this paragraph if necessary to achieve the number of votes needed to render a decision unless the member recuses himself for cause. Failure to achieve the necessary affirmative votes shall result in the dismissal of the case.

(d) Clerk of the Board. The Director of Planning and Zoning or the Director's designee shall be the clerk of the Board of Appeals. The clerk of the Board shall be the custodian of the records of proceedings, shall accept petitions, motions and correspondence to the Board, and shall maintain the docket in each case.

(e) Secretary. The Board of Appeals may appoint a secretary who shall record the proceedings, draft and maintain the minutes of Board meetings, and perform other secretarial duties as assigned by the Board.

(f) Administrative Assistant. The Board may appoint an administrative assistant who shall perform administrative duties as assigned by the Board.

(g) Legal Advisor. The County Solicitor shall be the legal advisor and draftsman for the Board of Appeals. The County Solicitor shall attend all meetings of the Board unless excused

by the chairperson. The County Solicitor shall provide advice and assistance to any member desiring to publish an independent or minority opinion. With the approval of the chairperson, the County Solicitor may delegate these duties to an Assistant County Solicitor.

SECTION 2.202. PETITIONS.

(a) Form and Contents of Petitions. The Board of Appeals shall prescribe the form and contents of petitions. A Petitioner shall obtain the petition from the Department of Planning and Zoning. The Petitioner shall ensure the accuracy and completeness of the information required in the petition. The petition shall be filed with the clerk of the Board, as defined under 2.201(c). The Department of Planning and Zoning may require corrections to the petition or additional information before the hearing on the petition is scheduled.

(b) Amendments to the Petition. If any amendments to the petition are made before or during a hearing, the Board, either before or during the hearing, may continue the hearing, or may suspend or postpone the hearing and remand the amended petition to the Department of Planning and Zoning and the Planning Board for further recommendations.

(c) Substantive Amendments to the Petition. If any substantive amendments to the petition are made before or during the hearing, the Board, either before or during the hearing, shall suspend or postpone the hearing and remand the amended petition to the Department of Planning and Zoning and the Planning Board for further recommendations.

(d) Dismissal. The Board shall dismiss a petition if it lacks jurisdiction to hear the petition. The Board may dismiss a petition if the Petitioner fails to request a hearing on the petition within six months of the date a petition is placed on the unscheduled docket or as set forth in section 2.204(h).

(e) Payment of Fees. At the time the petition is filed with the clerk of the Board, the Petitioner shall pay the filing and/or hearing fees in accordance with the current schedule of fees adopted by resolution of the County Council. Checks shall be made payable to the Director of Finance of Howard County.

(f) Refund of Fees. On its own motion and with sufficient cause, the Board may order the Director of Finance to refund the filing and/or hearing fees. If the Board of Appeals reverses the decision of an administrative agency after an appeal hearing pursuant to this subtitle, the Board shall order the Director of Finance to refund all administrative hearing and filing fees to the Appellant.

SECTION 2.203. NOTICE TO THE PUBLIC.

(a) Advertising. The Petitioner, at his or her own expense, shall advertise the date, time and place of the initial hearing in at least two newspapers of general circulation in Howard County. For variances in residential districts, the advertisement shall be published at least fifteen

days before the hearing. For all other petitions, the advertisement shall be published at least thirty days prior to the hearing. The Department of Planning and Zoning shall approve the proposed advertising before it is published.

(b) Posting of Property. Except in administrative appeals described in Section 2.203(d), if a petition involves land use, the property involved shall be posted with the time, date and place of the initial hearing. For variances in residential districts, the property shall be posted for at least fifteen days immediately before the hearing. For all other petitions, the property shall be posted for at least thirty days immediately before the hearing. The Department of Planning and Zoning shall determine the number of posters required and their location and the Petitioner shall bear the expense of posting. The Department of Planning and Zoning shall supply the posters. The Petitioner shall properly erect and maintain the posters.

(c) Filing Affidavit of Posting and Certificates of Advertising. The Petitioner shall file certificates of advertising and an affidavit of posting with the clerk of the Board or the secretary of the Board prior to the hearing.

(d) Hearings on Administrative Appeal From a Notice of Violation of County Laws or Regulations or on the Record. The advertising and posting requirements of this section do not apply to hearings on administrative appeals from a notice of violation of county laws or regulations or appeals heard on the record pursuant to Section 2.210(b).

(e) Hearings on Other Administrative Appeals. If the Petitioner cannot post the property because the Petitioner does not own the property, then the Petitioner shall send a copy of the petition and written notification of the place, time and date of the hearing to the property owner and the adjoining property owners, and shall file an affidavit of written notification with the clerk of the Board. The Petitioner shall comply with the advertising requirements.

(f) Hearings for Clarification or Revocation of a Special Exception when the Department of Planning and Zoning is the Petitioner. When the hearing is for clarification or revocation of a special exception and the Department of Planning and Zoning is the Petitioner, the Department of Planning and Zoning shall:

- (1) Advertise the date, time and place of the initial hearing at least thirty days before the hearing in at least two newspapers of general circulation in Howard County;
- (2) Send written notification of the place, time and date of the hearing to the adjoining and confronting property owners; and
- (3) Attempt to post the property.

(g) Responsibility for Assuring Compliance with Advertising and Posting Requirements. The Petitioner is responsible for assuring compliance with the advertising and posting requirements of this subtitle. If any question arises regarding compliance with the advertising and posting requirements, the burden is on the Petitioner to prove compliance. If the

Board determines that the Petitioner has made a good faith effort to comply with the advertising and posting requirements, the Board may give the Petitioner a reasonable opportunity to correct the non-compliance or, if the Board determines that the Petitioner has substantially complied with the public notice requirement, proceed with the hearing. If the Board determines that the Petitioner has not made a good faith effort to comply with the advertising and posting requirements, the Board may dismiss the petition.

SECTION 2.204. MEETINGS AND HEARINGS.

(a) Scheduled by Chairperson. The Board of Appeals shall hold meetings and hearings as scheduled by the chairperson, including preliminary hearings when the chairperson deems them necessary.

(b) Open to Public. The public is invited to attend Board of Appeals meetings and hearings. The individuals attending shall maintain order and refrain from disturbing the orderly process of the meeting or hearing. The chairperson may clear the room of disruptive individuals, or recess the meeting or hearing.

(c) Open Hearings. Evidence shall be presented to the Board of Appeals only in hearings open to the public. The Board shall not receive written or oral testimony from a party in interest outside of a hearing. Board members and the Board's staff shall not engage in communications of any kind with anyone other than Board counsel or staff, or another Board member regarding the merits of a case prior to the issuance of the decision and order.

(d) Place and Time of Hearings and Meetings. Board of Appeals hearings and meetings shall be held in the George Howard Building, Ellicott City, Maryland every Tuesday and Thursday at 7:30 p.m. unless the Chairperson schedules the hearing or meeting at a different date, time and place. Meetings of the Board of Appeals to deliberate cases and for other matters may be held from time to time, as determined by the Board. Notice of a meeting or hearing shall be posted at the Board's office in the George Howard Building one day prior to the meeting or hearing.

(e) Closed Meetings. The Board of Appeals may close a meeting, subject to the Maryland Open Meetings Act.

(f) Signing Up to Testify. All individuals who are called to testify or desire to testify at a hearing shall sign their own name to the roster in favor of or opposed to the petition before the Board, as the case may be. If a hearing is continued, only the individuals who have signed a roster prior to the end of the Petitioner's case or are called by the Petitioner in rebuttal shall be permitted to testify.

(g) Subsequent Hearings. Cases which have not been concluded at the initial hearing may be continued to a day and time announced by the Board immediately before the initial hearing is suspended. It shall not be necessary to readvertise a continued hearing or repost property.

(h) Postponement. All requests for postponement of the initial hearing date must be received by the Board of Appeals in writing, before the scheduled date of the initial hearing. No requests for postponement of a hearing shall be granted absent compelling circumstances. If a hearing is postponed, the Petitioner shall readvertise and repost the property with the new hearing date and time in accordance with these rules. Upon a third request for postponement of a hearing, the Board may dismiss the petition.

(i) Correspondence. A party filing written correspondence with the Board shall certify in writing that a copy of the correspondence has been served to all parties of record to the case or to their designated spokesperson. The Board may not consider the correspondence as evidence and shall return it if it is not accompanied by that written certification.

(j) Cases Pending in Court. The Board shall not hold a hearing on a petition involving substantially the same issues of a case that has been filed and is pending before a court of law. A hearing may be scheduled when the Board is advised by the Petitioner that the court has reached a final decision. The hearing shall be scheduled at the earliest possible date.

SECTION 2.205. RECORD OF HEARINGS.

(a) Official Record. The Board of Appeals shall maintain an official record of its proceedings in each case. This record shall include all testimony and exhibits and a recording of the proceedings.

(b) Transcription of Testimony. Transcriptions of testimony shall be made if requested for court review. The transcribed testimony may be obtained from the secretary of the Board upon payment in advance of the cost of transcribing the record. The transcriber shall certify the accuracy of any transcript. The County Council shall prescribe by resolution the specifications for transcript preparation and a reasonable fee to be charged for the costs of transcription and certification.

SECTION 2.206. ADMINISTRATIVE APPEALS.

An individual wishing to appeal an administrative decision of a county agency shall file an appeal on the petition provided by the Department of Planning and Zoning within thirty days of the date of that administrative decision, unless the law provides a different time period for appeal.

SECTION 2.207. EVIDENCE AND MOTIONS.

(a) Pre-submission of Technical Reports. Any Petitioner or Proponent wishing to submit a technical report or other similar documentary evidence to the Board at the hearing must file six copies of the report with the clerk of the Board at least thirty days prior to the date of the initial hearing on the petition. Any Opponent or Respondent wishing to submit a report or other similar documentary evidence to the Board at the hearing shall file six copies of the report with the clerk of the Board and send one copy to the Petitioner at least ten days prior to the date of the initial hearing on the petition. If technical reports are filed late, the Board may postpone the

hearing to allow the Board members or other parties time to review the report, or take any other course of action as determined by the Board. Even if the report or other documentation is timely filed, the Board reserves the right to postpone the hearing and to require additional copies of the material for technical staff review.

(b) Rules of Evidence. Any evidence which would be admissible under the rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the Board of Appeals. The Board is not bound by the technical rules of evidence but will apply those rules so that probative evidence may be conveniently brought forth. The Board may exclude immaterial or unduly repetitious testimony and other evidence and may limit the number of witnesses when testimony is cumulative in nature.

(c) Materials Received by Reference. Public records, previous decisions and orders of the Board of Appeals, technical staff reports, Planning Board recommendations and laws and regulations of Howard County which pertain to the particular case shall be received by the Board of Appeals for its consideration.

(d) Exhibits. Exhibits and plats admitted into evidence may not be mounted and shall 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.

(e) Motions. A party may request the Board to address a preliminary matter prior to the date of the initial hearing by filing the request as a motion to the Board 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, and any person entitled to written notification under rule 2.203(e) and (f), as the case may be. The certification shall state “any person interested in responding to the motion shall file a written response with the Board within fifteen days of the date that the motion was filed.” The Board may rule on the motion at any time fifteen days after the filing of the motion.

SECTION 2.208. APPEARANCES BEFORE THE BOARD OF APPEALS.

(a) Parties. Except for administrative appeals described in subsections (b) and (c), an individual or any other legal entity may become a party to a proceeding before the Board by:

- (1) 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 Board;
- (2) Testifying before the Board and providing it with the name and address of the party and/or legal entity; or
- (3) Delivering a letter to the Board, 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 Board 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 shall not be used for purposes of conferring party status on those individuals signing the petition under this provision.

(b) 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.

(c) Parties to Administrative Appeals on the Record. Parties to an administrative appeal to be heard by the Board on the record pursuant to section 2.210(b) are limited to the administrative agency and the parties of record before the administrative agency.

(d) Who May Appear. The following individuals may appear before the Board providing that the individual, partnership, corporation, trust, association, political subdivision, body or department they represent is a party to the proceedings before the Board:

- (1) An individual may appear on his or her own behalf.
- (2) A member of a partnership may represent the partnership.
- (3) A duly authorized representative of a corporation, trust, or association may represent the corporation, trust, or association.
- (4) A duly authorized representative or employee of a political subdivision, body, or department may represent the political subdivision, body, or department.

(e) Spokesperson. When a group of individuals appears in opposition to a petition, the Board may request them to elect a spokesperson who shall have the power to cross-examine witnesses, call witnesses, introduce evidence on behalf of the group, object to the introduction of evidence, make opening and closing statements, and act in a representative capacity solely on behalf of those individuals electing the spokesperson. Those individuals not electing to be represented by a spokesperson may act on their own behalf.

(f) Representation by Attorney-at-Law. Any party in a proceeding may be represented by an attorney-at-law admitted to practice law before the Court of Appeals of Maryland. Before the hearing begins the attorney shall give the Board 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.

(g) Representatives of Associations; Number of Members; Geographical Limits. An individual testifying on behalf of any association shall 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 shall state the number of members in the association and its geographic boundaries.

(h) Subpoenas.

- (1) Request for Subpoena; Content of Request. Persons requesting the Board to issue a subpoena shall submit a written request to the Board at least twenty-one days before the initial hearing. The request shall 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. The subpoena shall be issued by the Board at least fourteen days prior to the date of the hearing.
- (2) Issuance and Service of Subpoena. The subpoena shall be signed by the chairperson of the Board at least fourteen days prior to the date of the hearing. The signed subpoena shall be promptly delivered to the person requesting the subpoena who shall be responsible for arranging service of the subpoena at least seven days prior to the date of the hearing. The person serving the subpoena shall certify in writing that the subpoena was served personally or by certified mail.

SECTION 2.209. CONDUCT OF BOARD OF APPEALS HEARINGS; ORIGINAL JURISDICTION.

(a) Oath. An individual testifying shall give his or her name and address and take the following oath given by the chairperson: "Do you solemnly promise to speak truthfully in the testimony you are about to give?"

(b) Order of Presentation.

- (1) The County Solicitor introduces reports and official documents pertaining to the case.
- (2) Opening statements.
- (3) Petitioner's presentation.
 - (i) Direct examination of witnesses.
 - (ii) Cross-examination of witnesses by the opposition, by Board members and by the County Solicitor.
 - a. *Individuals questioning the Petitioner's witness.* Normally, the opposition or a spokesperson cross-examines, but any individual wishing to question the Petitioner's witness may do so with leave from the chairperson. The chairperson may grant this leave after recognizing the individual who wishes to question the Petitioner's witness and after that individual has given his or her name, home address, and, if appropriate, its location with reference to the property which is the subject of the hearing.

- b. *Questioning.* Questioning shall be brief, pertain only to statements made by the witness, and shall not be preceded by statements or speeches. The questioning shall be interrogatory in nature and shall not be argumentative, nor make allusions about the personality or motives of the witness. At the discretion of the chairperson, questions or cross-examination shall be put in written form and asked by the County Solicitor or Assistant County Solicitor advising the Board.
 - (iii) Re-direct examination of Petitioner's witnesses.
 - (iv) Re-cross-examination of Petitioner's witnesses.
- (4) Opposition's presentation.
 - (i) Direct examination of opposition's witnesses.
 - (ii) Cross-examination of opposition's witnesses by the Petitioner, by the Board members, and by the County Solicitor.
 - (iii) Re-direct examination of opposition's witnesses.
 - (iv) Re-cross-examination of opposition's witnesses.
- (5) Petitioner's rebuttal. The Petitioner may present evidence to rebut any evidence introduced by the opposition, but no new line of testimony may be introduced at this time.
- (6) Petitioner's summation.
- (7) Opposition's summation.

(c) Burden of Proof. The burden of proof is one of a preponderance of the evidence and is on the Petitioner to show, by competent, material and substantial evidence, that he or she is entitled to the relief requested and that the request meets all prescribed standards and requirements.

(d) The Board's Action. At the end of the presentation, the Board of Appeals may grant or deny the petition, stating its findings of fact and conclusions of law, or it may take the case under advisement for further deliberation and later decision. The Board may not consider evidence from either side after the hearing is concluded; however, the Board, on its own initiative or in response to a request by a party, may receive or require legal memoranda summarizing the presentations of the Petitioner and the opposition.

SECTION 2.210. CONDUCT OF ADMINISTRATIVE APPEAL HEARINGS.

(a) De Novo Appeals.

- (1) Oath. An individual testifying shall give his or her name and address after taking the following oath given by the chairperson: "Do you solemnly promise to speak truthfully in the testimony you are about to give?"
- (2) Order of presentation.
 - (i) The County Solicitor or Assistant County Solicitor advising the Board introduces reports and official documents pertaining to the case.
 - (ii) Opening statements.
 - (iii) Presentation by party(ies) having the burden of proof ("proponent").
 - a. Direct examination of witnesses.
 - b. Cross-examination of witnesses by adverse party(ies) ("respondent"), by Board members, and Board's attorney.
 - c. Re-direct examination.
 - d. Re-cross-examination.
 - (iv) Presentation by the respondent.
 - a. Direct examination of witnesses.
 - b. Cross-examination of witnesses by proponent, by Board members, and Board's attorney.
 - c. Re-direct examination.
 - d. Re-cross-examination.
 - (v) Proponent's rebuttal.
 - (vi) Summation by proponent.
 - (vii) Summation by respondent.
- (3) Legal memoranda. The Board may receive or require legal memoranda summarizing the presentations of the parties, either on its own or upon approval of a request made at the hearing.

- (4) Burden of proof.
- (i) In an appeal of an administrative agency's issuance of a notice of violation of county laws and regulations, the burden of proof is upon the administrative agency (proponent) to show, by a preponderance of the evidence, that the respondent has violated the laws or regulations in question. However, it shall be the respondent's burden to prove all affirmative defenses, including the defense of nonconforming use.
 - (ii) In all other *de novo* appeals, the burden of proof is upon the appellant to show that the action taken by the administrative agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.

(b) Appeals on the Record.

- (1) Record Transcript. Within thirty days of filing an appeal on the record from an action of an administrative agency, the Appellant shall file one copy of the record transcript of the hearing being appealed with the clerk of the Board, and shall serve one copy of the record transcript with the administrative agency and five copies with the Board of Appeals.
- (2) Memorandum of Appellant. Within fifteen days of filing the transcript, the Appellant shall file a memorandum setting forth concisely all points on which the appeal is based and an argument in support of each point with the clerk of the Board, and serve one copy of the memorandum with the administrative agency and five copies with the Board of Appeals. The argument shall include:
 - (i) Points of law;
 - (ii) References to legal authority;
 - (iii) Page citations to particular portions of the record transcript; and
 - (iv) Exhibits by number.
- (3) Administrative Agency's Reply Memorandum. Within fifteen days after the Appellant's memorandum is filed, the administrative agency shall file a reply memorandum with the Board. The memorandum shall answer concisely all points on which the appeal is based and an argument against each point. The arguments shall include:
 - (i) Points of law;
 - (ii) References to legal authority;
 - (iii) Page citations to particular portions of the record transcript; and
 - (iv) Exhibits by number.
- (4) Sanctions for Late Filing of Memorandum. If the Appellant fails to file the memorandum within the time prescribed under this section, the Board may dismiss the appeal.

- (5) Oral arguments. The Board shall entertain oral arguments based upon the record. The Board may limit the length of oral arguments. For good cause shown, the Board may receive additional evidence. The order of presentation shall be as follows:
 - (i) Presentation of the reports and decision of the county agency by the Appellant.
 - (ii) Presentation by the Appellant.
 - (iii) Presentation by the county agency or Solicitor.
 - (iv) Presentation by the Opposition.
 - (v) Decision by the Board
- (6) Burden of Proof. The burden of proof shall be on the Appellant to show that the action taken by the administrative agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.
- (c) **The Board's Action.** The Board may dismiss the administrative appeal or may affirm, reverse, or modify the agency's action, remand the action to the agency for further proceedings, or an appropriate combination of the above.

SECTION 2.211. DECISION AND ORDER.

(a) **Time Period of Issuance of Decision and Order.** Each case shall be decided and a decision and order issued no later than sixty days after the case is deliberated, unless the Board on its own motion and with good and sufficient reason, extends the time to no later than ninety days after the Board concludes its deliberation of a case.

(b) **Decision and Order.** The final decision and order of the Board granting or denying the petition shall be in writing, signed by the voting Board members, attested by the administrative assistant or the secretary, and shall be accompanied by findings of fact and conclusions of law. The decision and order shall be made a part of the record of the proceedings, filed with the Department of Planning and Zoning, and maintained as part of the official records of the county.

(c) **Minority Opinion.** Any member who does not agree with the majority opinion may prepare a minority opinion to be attached to the Decision and Order.

(d) **Mail Copies to Parties; File Plats or Summaries.** When the clerk receives copies of the decision and order, the clerk shall mail copies to the parties or their representatives. After a land use petition is granted by the Board, the Department of Planning and Zoning shall file plats or summaries, provided by the Petitioner, with the Howard County office of the Maryland State Department of Assessments and Taxation.

(e) **Appeals from Decision of the Board.** Within thirty days after any decision of the Board of Appeals is entered, any person, officer, department, board or bureau of the county, jointly or severally aggrieved by any such decision, may appeal to the Circuit Court for Howard County, in accordance with the Maryland Rules of Procedure. The Board of Appeals shall be a party to all appeals and shall be represented at any such hearing by the Office of Law.

SECTION 2.212. REVISORY POWER OF THE BOARD.

(a) Request of a Party. Within fifteen days of the Board issuing a decision and order, a party of record may file a motion for reconsideration. The Board may revise its decision and order if the party petitioning for reconsideration establishes mistake of fact or mistake of law. The motion for reconsideration may include a request to suspend the decision and order.

(b) Process. The motion shall be in writing. The moving party shall mail or deliver a copy of the motion to each party and certify to the Board that notice to each party has been provided. Any party of record may file a written response to the motion for reconsideration within fifteen days of the filing date of a motion for reconsideration. At the discretion of the Board, oral argument may be heard on the motion. The Board shall not consider new or additional evidence unless such evidence could not reasonably have been presented at the hearing. If the Board determines to revise its decision and order, the Board shall send a copy of the revised decision and order to each party.

(c) Correcting Clerical Error. At any time and without prior notice or hearing, on its own initiative or on motion of any party, the Board may modify its decision in order to correct a clerical error.

(d) Time for Appeal to Circuit Court. The filing of a motion for reconsideration does not suspend the time for filing an appeal to Circuit Court unless the Board suspends its decision and order. Once an appeal to the Circuit Court is filed, the Board no longer retains jurisdiction to suspend its decision and order or to consider a motion for reconsideration.

SECTION 2.213. SEVERABILITY.

If any clause, sentence, part or parts of this subtitle, or of any section of this subtitle, is held to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the validity of the remaining parts of this title or of any section.

Appendix A

HOWARD COUNTY CHARTER

ARTICLE V. BOARD OF APPEALS

SECTION 501. THE COUNTY BOARD OF APPEALS.

(a) *Appointment; term; compensation.* The County Board of Appeals shall consist of five registered voters and residents of the County appointed by the Council. Appointees shall serve overlapping terms of five years from the first day of January of the year of their appointments, or until their successors are appointed. Vacancies, except those at the expiration of a term, shall be filled in the same manner as the original appointment and for the unexpired term. No member shall be reappointed after having served eight consecutive years immediately prior to reappointment. No more than three members shall be registered with the same political party. The members of the Board shall be paid at the rate of Twelve Hundred Dollars (\$1,200.00) per year unless such compensation be changed as provided in Section 501(f) of this article. Members of the Board shall receive reasonable and necessary expenses as may be provided in the budget.

(b) *Powers and functions.* The Board of Appeals may exercise the functions and powers relating to the hearing and deciding, either originally or on appeal or review, of such matters as are or may be set forth in Article 25A, Subparagraph (u) of the Annotated Code of Maryland, excluding those matters affecting the adopting of or change in the general plan, zoning map, rules, regulations or ordinances.

(c) *Rules of practice and procedure.* The Board of Appeals shall have authority to adopt and amend rules of practice governing its proceedings which shall have the force and effect of law when approved by legislative act of the Council. Such rules of practice and procedures shall not be inconsistent with the Administrative Procedures Act, Article 41, of the Annotated Code of Maryland. The rules may relate to filing fees, meetings and hearings of the Board, the manner in which its chairperson shall be selected and the terms which he shall serve as Chairperson and other pertinent matters deemed appropriate and necessary for the Board. Three members of the Board shall constitute a quorum of the Board, and its hearings shall receive public notice as required by law. All matters which come before the Board pursuant to its exercise of original jurisdiction shall receive a de novo hearing on all issues. Those matters coming before the Board pursuant to an appeal from an executive, administrative or adjudicatory order wherein a formal hearing was held and a verbatim record developed shall be reviewed by the Board on the basis of the record before it. However, for good cause shown, any party before the Board shall have the opportunity to present additional evidence on any issue if, in the opinion of the Board, it is required for proper disposition of the case. All hearings held by the Board shall be open to the public, and provision shall be made for all interested citizens and citizens groups to be heard. The Board shall cause to be maintained complete public records of its proceedings, with a suitable index.

(d) *Appeals from decisions of the Board.* Within thirty days after any decision of the Board of Appeals is entered, any person, officer, department, board or bureau of the County, jointly or severally aggrieved by any such decision, may appeal to the Circuit Court for Howard County, in accordance with the Maryland Rules of Procedure. The Board of Appeals shall be a party to all appeals and shall be represented at any such hearing by the Office of Law.

(e) *Employees of the Board.* The Board may appoint, within budgetary limitations, such employees, and the Executive shall make available to the Board such services and facilities of the County, as are necessary or appropriate for the proper performance of its duties.

(f) *Implementing legislation.* The powers and functions of the Board of Appeals as herein provided for shall be defined by implementing legislation heretofore or hereafter enacted by the Council, subject to and to the extent required by applicable State law. The Council may by legislative act increase the compensation of the members of the Board of Appeals as provided in Section 501(a) of this article and thereafter decrease such compensation; provided, however, that no reduction shall affect the compensation of a member of the Board of Appeals during his or her current term, and in no event shall the Council have the power to decrease the compensation of members of the Board below the figure provided in this Charter. To the extent permitted by State law, the Council shall also have the power, by legislative act, to prescribe other appeals to be heard by, or to limit the jurisdiction of, the Board of Appeals in addition to those specified in this Article.

Appendix B

HOWARD COUNTY CODE

TITLE 16. PLANNING, ZONING AND SUBDIVISIONS AND LAND DEVELOPMENT REGULATIONS SUBTITLE 3. BOARD OF APPEALS

SECTION 16.300. COMPENSATION.

Members of the Howard County Board of Appeals shall be paid \$4,500 per year plus \$90 per official public session, up to a maximum cumulative total payment of \$12,900 per year. Members of the Board shall receive reasonable and necessary expenses, as may be provided in the budget.

SECTION 16.301. POWERS.

The Howard County Board of Appeals shall have the following zoning powers:

- (a) To authorize a variance or exception from the terms of the zoning regulations as is necessary to avoid arbitrariness and to obtain substantial justice within the spirit of the zoning regulations. However, the County Council, by passage of a resolution after public hearing, shall be the sole authority to grant these variances for governmental uses of land.
- (b) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the application, interpretation, or enforcement of this title or of any regulations adopted pursuant to it.
- (c) To authorize uses provided by the zoning regulations. The Board of Appeals shall not make a final decision on uses authorized by the zoning regulations until it has considered the report of the Planning Board. However, the County Council, by passage of a resolution after public hearing, shall be the sole authority to issue special use variances for governmental uses of land.

SECTION 16.302. ENFORCEMENT.

In addition to any other remedies provided by law, the Department of Planning and Zoning may institute any appropriate action or proceedings to compel compliance with a decision of the Board of Appeals in any zoning matter. Alternatively or in addition to and concurrent with all other remedies, the Department of Planning and Zoning may enforce a decision of the Board of Appeals. With civil penalties, as provided in title 24, "Civil Penalties," of the Howard County Code. A violation shall be a class B offense.

SECTION 16.303. SEVERABILITY.

If any clause, sentence, part or parts of this subtitle, or of any section thereof, shall be held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining parts of this title or of any section thereof.

