
1 **BOARD OF APPEALS RULES OF PRACTICE AND PROCEDURE**

2 **Table of Contents.**

3 (To be drafted and included during final rough draft review)

4

5 **Introduction.**

6 These Rules of Practice and Procedure **(the Rules)** have been adopted by the Board under
7 authority granted by the Howard County Charter, Section 501. Additional guidance may be
8 found in the Howard County Charter, Howard County Code, and the Howard County Zoning
9 Regulations.

10 The Board of Appeals is an independent Board appointed by the County Council and is
11 composed of Howard County residents who are registered voters. Board members must comply
12 with specific requirements and standards, including those enumerated within the Howard County
13 Employee Manual, which is available online at [https://www.howardcountymd.gov/human-](https://www.howardcountymd.gov/human-resources)
14 [resources](https://www.howardcountymd.gov/human-resources)

15 For further information and assistance, parties may contact the Board of Appeals
16 Administrative offices or review the Board of Appeals User's Guide, available on the Board of
17 Appeals website at <https://cc.howardcountymd.gov/zoning-land-use/board-appeals>.

18

19 **Applicability.**

20 These Rules shall be governed by and construed under the laws of the State of Maryland
21 and the laws of Howard County and shall apply to the Hearing Authority. ~~In the event of any
22 conflict or inconsistency between the provisions of these Rules and the terms and provisions of
23 any other policy or procedure, the terms and provisions of these Rules shall control, provided,~~

1 ~~however, that in the event of any conflict or inconsistency between the Board of Appeals Rules~~
2 ~~of Process and Procedure, and Maryland State Law, Howard County Charter, or local Howard~~
3 ~~County legislation, then those instructions shall control~~

4 ~~In the event of any conflict or inconsistency between the provision of these Rules and the~~
5 ~~terms of any other policy or procedure, the provisions of these Rules shall govern.~~
6 ~~Notwithstanding the foregoing, in the event of any conflict or inconsistency between these Rules~~
7 ~~and Maryland State law, the Howard County Charter, or any applicable local Howard County~~
8 ~~legislation, the latter shall prevail and govern.~~

9 If relevant guidance is defined elsewhere in Howard County policy or procedure, those
10 terms shall complement these Rules and not be considered prescriptive.

12 **Rule 1.0 Organization.**

13 **1. Members.** The County Board of Appeals shall consist of five residents who are registered
14 voters of the County and appointed by the Council. Each councilmanic district shall be
15 represented by a single appointed Regular Board member. The Board of Appeals may
16 exercise its authority and function only when convened as a Board. Appointed members have
17 no authority to act individually without delegation of authority from the Board. It is both the
18 right and the responsibility of each Board member to meaningfully participate in hearings
19 and other meetings.

20 **2. Alternate Members.** If one Regular member of the Board of Appeals is absent, has a conflict
21 of interest, or is otherwise unable to participate in a hearing, an Alternate member shall be
22 selected to temporarily serve in the Regular member's absence. ~~An Alternate member shall be~~
23 ~~a registered voter and resident of the County. Each County Council shall appoint one~~

Commented [NR1]: Comment from Jean Xu:
"I believe having an alternate member conflicts with the
current charter specify that BOA shall consist of 5 members.
But in case the majority of the board want to have an
alternate members, I made revisions as shown"

1 ~~2.3. Alternate member whose political affiliation is the same as that of the Regular member~~
2 ~~representing the district. An Alternate member of the Board of Appeals shall be a registered~~
3 ~~voter and resident of the County and shall be appointed by the County Council from a~~
4 ~~county wide list of applicants as an At Large member. Whenever possible, the Alternate~~
5 ~~member shall be of the same political affiliation as the absent Regular member. The~~
6 Alternate member shall serve a term as defined by legislation. Given the scope and
7 complexity of the Board's subject, the Council shall consider County residents with prior
8 Howard County Board of Appeals experience during the Alternate member selection process,
9 including voters who previously served as members of the Board of Appeals.

10 ~~2.1.3.1. Powers and functions. An Alternate member shall serve on the Board only in the~~
11 ~~absence of a permanent member. An Alternats member shall serve on the Board only in~~
12 ~~the absence of the Regular member from the same district.~~ An Alternate member shall
13 meet the same qualifications as a permanent member, including completion of all
14 required training and other requirements of these Rules of Practice and Procedure. When
15 serving as the fifth Board member, the Alternate member shall have and exercise all the
16 powers and duties of a Regular member of the Board and shall fully participate during
17 individual matters based on a Regular member's temporary absence.

18 ~~2.1.1.3.1.1.~~ At the request of the Chairperson, the Alternate members shall attend and
19 fully participate in specific hearings or meetings. If all five Regular members are
20 present, the Alternate member shall not attend or be permitted to participate in
21 hearings, work sessions, or other public meetings before the Board. At no time shall
22 more than five Board members participate as the Board of Appeals.

1 3.1.2. When an Alternate member participates in the first or initial date of a docketed
2 matter, that member shall continue to fully participate during any subsequent
3 continuation dates through the final disposition of the matter, and the Regular
4 member shall remain absent.

5 ~~2.1.2. 3.1.3.~~ ~~If an Alternate member does not participate on the first or initial date of a~~
6 ~~docketed matter, that member shall be prohibited from participating in any~~
7 ~~subsequent continuation dates, regardless of the absence of the Regular member.~~

8 ~~2.1.3.~~ ~~An Alternate member shall temporarily fill the position of one Regular Board~~
9 ~~member. If more than one Regular member is absent, the Chairperson shall~~
10 ~~postpone the meeting.~~

11
12 3.4. *Presiding Officers.* Each January, the five Regular Board members shall elect one
13 Chairperson and one vice-chairperson by majority vote during a public meeting. The Vice-
14 Chairperson shall assume the Chairperson's duties if the Chairperson is absent or unable to
15 serve. The Board Chairperson and Vice-Chairperson shall be responsible for the Board's
16 compliance with the Maryland Open Meetings Act. They shall complete all required Open
17 Public Meetings training provided by State law within 14 days of their election.

18 3.1.4.1. *Chairperson responsibilities.*

19 3.1.1.4.1.1. Conduct full, fair, and impartial hearings and meetings;

20 3.1.2.4.1.2. Schedule hearings and meetings;

21 3.1.3.4.1.3. Take action to avoid unnecessary delay in the disposition of the
22 proceedings and maintain order;

23 3.1.4.4.1.4. Administer oaths and affirmations;

- 1 ~~3.1.5.~~4.1.5. Upon the Board's motion or the motion of a party, the Chairperson shall
2 issue subpoenas for witnesses and the production of evidence;
- 3 ~~3.1.6.~~4.1.6. Rule upon offers of proof and admit relevant and material evidence;
- 4 ~~3.1.7.~~4.1.7. Limit unduly repetitious testimony and reasonably limit the time for
5 presentations;
- 6 ~~3.1.8.~~4.1.8. Rule on scheduling matters, including continuances and postponements;
- 7 ~~3.1.9.~~4.1.9. Direct parties to submit legal memoranda, proposed findings of fact, and
8 proposed conclusions of law;
- 9 ~~3.1.10.~~4.1.10. Issue such orders as are necessary to procure procedural simplicity and
10 administrative fairness and to eliminate unjustifiable expense and delay; and
- 11 ~~3.1.11.~~4.1.11. Conduct hearings in a manner suited to ascertain the facts and safeguard
12 the rights of the parties to the hearing.

13
14 **Rule 2.0 Administrative Operations.**

15 ~~1.~~—The Hearing Authority administrative offices shall be open to the public by appointment
16 from at least 8:30 a.m. to 4:30 p.m., Monday through Friday of each week except:

17 1.

18 ~~1.1.~~ On days designated under County regulation for the observance of legal holidays by
19 County employees or;

20 1.1.

21 ~~1.1.1.~~1.2. On days when the office is closed due to emergency, inclement weather, or other
22 good cause by order of the Clerk of the Board of Appeals.

1 **2.** *Board of Appeals Clerk; Roles and Responsibilities.* The County Council Administrator shall
2 be the Clerk of the Board of Appeals and the temporary official custodian of records for the
3 duration of matters docketed with the Hearing Authority.

4 **2.1.1.** For land use issues, all records and documents held by the Department of
5 Planning and Zoning shall be transferred to The Board of Appeals Clerk
6 immediately upon the docketing of a petition. Following the adjudication of a
7 docketed matter, the Clerk shall return and transfer all records to the Director of
8 Planning and Zoning, who shall retain the documents as required as the permanent
9 custodian of records.

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1 **3. Board of Appeals Administrator; Roles and Responsibilities.** The Board of Appeals

2 Administrator shall report to the Board of Appeals Clerk and shall:

3 **3.1.1.** Be the official custodian for Board members' training and compliance records;

4 **3.1.2.** Ensure all hearings and meetings of the Board are audio and video recorded and
5 live streamed when applicable;

6 **3.1.3.** Draft and maintain the minutes of Board meetings;

7 **3.1.4.** Accept petitions, motions, and correspondence to the Board;

8 ~~3.1.4.~~

9 ~~3.1.5. Assume primary administrative responsibility for issuing public notice, including~~
10 ~~the preparation of meeting agendas, as required for all hearings and meetings.~~

11 ~~3.1.5. Have lead administrative responsibility for providing public notice, including~~
12 ~~meeting agenda development, as required for all hearings and meetings;~~

13 **3.1.6.** Prepare a draft agenda for the Chairperson's approval as soon as practicable
14 before public posting;

15 **3.1.7.** Maintain the docket in each case;

16 **3.1.8.** Docketing petitions received following these rules and ensuring only the proper
17 forms are utilized and contain the information prescribed by the Board of Appeals;

18 **3.1.9.** Record the actions of the Board and draft meeting minutes for review and
19 approval by the Board;

20 **3.1.10.** Coordinate responses to motions as directed by the Chairperson and prepare
21 Board orders for the Chairperson's signature;

1 **3.1.11.** At the direction of the Chairperson, conduct and record roll call votes;

2 **3.1.12.** Create and produce agenda items and other Board documents, making such
3 articles available to Board members one week before a scheduled Board session,
4 whenever practicable;

5 **3.1.13.** Receive and disseminate draft written hearing decisions and orders from the
6 County Solicitor for Board member review, approval, and public posting;

7 **3.1.14.** Maintain an accurate Board member roster, including email and phone number
8 contact information. No Board members' personal contact information shall be
9 publicly posted;

10 **3.1.15.** Prepare and submit a monthly Board member attendance report to the Council
11 Administrator and the Chairperson by the 10th day of each month. The report shall
12 list each member's absences, virtual attendance, and in-person attendance during
13 scheduled sessions for the preceding month;

14 **3.1.16.** Post all hearing and meeting-related documents online for public consumption on
15 the Board of Appeals website as soon as possible following receipt as prescribed by
16 these Rules.

17 ~~4.5.~~ *Board of Appeals Administrative Assistants.* The Board of Appeals Clerk may assign
18 administrative assistants who shall report to the Board Administrator and perform
19 administrative duties as assigned by the Board through the Administrator.

20 ~~5.~~ *Legal Advisor.*

21 ~~6.~~ **The County Solicitor shall be the legal advisor and drafts person for the Board of Appeals.**

22 **The Board's Legal Advisor shall report to the Board of Appeals and shall:**

1 6.

2 ~~6.1. The County Solicitor shall attend~~ all meetings of the Board unless excused by the
3 Chairperson;

4 ~~6.2. Identify relevant legal issues. Proactively monitor legal landscapes and identify potential~~
5 ~~legal risks that could affect the Board's operation;~~

6 ~~6.3. Provide clear explanations. Explain complex legal concepts in a way that is~~
7 ~~understandable to board members without a legal background;~~

8 ~~6.4. Offer legal advice. Advising the board on appropriate legal courses of action based on~~
9 ~~their decision-making needs;~~

10 ~~6.5. Report on compliance status. Keeping the board updated on the organization's~~
11 ~~compliance with relevant laws and regulations;~~

12 ~~6.6. Present legal options. Present different legal options and potential consequences~~
13 ~~of each option to the board for consideration.~~

14 ~~6.7. The County Solicitor shall provide legal advice to the Board and assist any individual~~
15 ~~Board~~ member(s) desiring to publish an independent, concurrent, or minority opinion.

16 Any opinion(s) shall be incorporated as part of the Board's final decision and order.

17 ~~6.8. Obtain the Board's guidance prior to and while representing the Board before any~~
18 ~~court of law. Provide the Board with regular legal updates on matters adjudicated by the~~
19 ~~Board and subsequently appealed to a court of law. Provide the Board with any~~
20 ~~documents submitted by a party during proceedings in a court of law during a case in~~
21 ~~which the Board is named as a party.~~

1 ~~6.3.6.9.~~ 6.3.6.9. The Board's legal advisor shall provide Board of Appeals members with a
2 memorandum of law for each docketed matter no later than 5 days before the scheduled
3 initial hearing date.

4 ~~6.3.1.6.9.1.~~ 6.3.1.6.9.1. The confidential memorandum shall contain relevant points of law,
5 pertinent published legal opinions and prior board decisions, a summary of
6 preliminary legal issues for the Board's consideration, and standards of evaluation
7 for the Board to contemplate when determining findings of fact and conclusions of
8 law.

9 ~~6.3.2.6.9.2.~~ 6.3.2.6.9.2. The Board may also request that counsel provide a similar legal
10 memorandum before deliberation.

11
12 **Rule 3.0 Petition Process.**

- 13 **1. Form and Contents of Petitions.** The Board of Appeals shall prescribe the form and contents
14 of petitions to be used by the Hearing Authority. The petition form approved by the Board of
15 Appeals shall be the only petition used by the Hearing Examiner and the Board of Appeals.
16 Petitions shall be used only by the Hearing Authority. Each correctly filed petition shall
17 receive a unique docketing number formatted as required by these Rules. The only approved
18 petition form to be used by an Appellant can also be found online on the Board of Appeals
19 website at <https://cc.howardcountymd.gov/zoning-land-use/board-appeals> or in the Board's
20 Rules of Procedure Appendix. No other form shall be ~~used or~~ accepted.
- 21 **2. Accuracy.** The Petitioner shall ensure the accuracy and completeness of the information
22 required in the petition before submission. A completed petition shall be filed with the Board

1 Administrator or online when available. Absent written authorization from the Chairperson,
2 all forms or other documents related to a docketed matter shall be submitted for the Board's
3 consideration in the same manner.

4 **3. *Submission.*** Any petition for appeal that is incomplete or incorrect will not be docketed.
5 Submitting an inaccurate or incomplete petition does not extend the filing deadline
6 requirements. It is the sole responsibility of the Petitioner to ensure their case is filed on time.

7 **4. *Notification Required.*** During the pendency of a matter, a party must notify the Board
8 Administrator of a change in the party's mailing address, email address, and phone number.

9 **5. *Amendments to a Petition.***

10 **5.1.** Amendments to a docketed petition shall be made only during a public hearing.

11 **5.2.** The Board may continue, suspend, or postpone a hearing in response to a proposed
12 amendment.

13 **5.3.** The Board may order that an amended petition be remanded to the Department of
14 Planning and Zoning if the Board determines further technical staff review or other
15 guidance is needed.

16 **5.4.** A majority vote shall decide any Board action based on petition amendments.

17 **5.5.** At no time shall the Department of Planning and Zoning recommend approval or denial
18 of a petition.

19 **6. *Postponement and Dismissal.*** The Board shall dismiss a petition where it lacks jurisdiction to
20 proceed. The Board shall dismiss a petition if the Petitioner fails to request a hearing within
21 **180 days** ~~six months~~ of the date a petition is placed on the unscheduled docket. If an initial
22 hearing date is postponed, the Petitioner shall repost the property with the new hearing date

1 and time. No requests for postponement shall be granted absent compelling circumstances.
2 Upon a third request for postponement, the Board shall dismiss the petition with a majority
3 vote.

4 **7. *Payment of Fees.*** At the time of filing, the Petitioner shall pay the required fees per the
5 current schedule of fees adopted by resolution of the County Council.

6 **8. *Refund of Fees.*** If the Board of Appeals reverses the decision of an Administrative Agency
7 after an appeal hearing, then the Board shall order the Director of Finance to refund all
8 administrative hearing and filing fees upon request by the Appellant.

9 **8.1.** The Appellant must request fees to be refunded before the conclusion of the Board's
10 deliberation. An Appellant's request may be submitted verbally during a public hearing or
11 in writing as detailed in these Rules.

12 **8.2.** No request shall be considered if received following the issuance of the Board's final
13 written decision and order.

14
15 **Rule 4.0. Public Notice.**

16 **1. *Advertising.***

17 **1.1.** The Board Administrator shall post a hearing notice on the Board of Appeals website and
18 the Board's Notice Board in the George Howard Building. The hearing notice shall include
19 the same information as the notice posted on the property by the Petitioner.

20 **1.2.** For variances in residential districts, the notice shall be posted at least 15 consecutive days
21 before the initial hearing.

1 **1.3.** For all other petitions, the notice shall be posted for at least 30 consecutive days before
2 the scheduled initial hearing.

3 **1.4.** For 60 days following the enactment of these rules by the County Council, the Board
4 Administrator shall provide once weekly notice in at least two newspapers of general
5 circulation in Howard County. The newspaper advertisement shall inform readers that all
6 public notices for Board of Appeals matters can be found online at the Board of Appeals
7 website.

8 **2. Posting.**

9 **2.1.** Except in administrative appeals from a notice of violation of county laws or regulations,
10 the property involved shall be posted with the time, date, and place of the initial hearing.
11 The sign shall include website addresses for the Department of Planning and Zoning and
12 the Board of Appeals.

13 **2.1.1. 15 days.** For variances in residential districts, the property shall be posted for at
14 least 15 days continuously immediately before the scheduled initial hearing date.

15 **2.1.2. 30 days.** For all other petitions, the property shall be posted for at least 30 days
16 continuously immediately before the scheduled initial hearing date.

17 **2.1.3. Installation.** If a weather-related event, vandalism, or other unexpected disruption
18 prevents the continuous display of the posting, then the Petitioner must immediately
19 notify the Board of Appeals and repost the property as soon as practical.

20 **2.1.4. Removal.** In all cases, the Petitioner shall remove posting signage within 15 days
21 following the conclusion of the hearing.

1 **3. Posters.** The Department of Planning and Zoning shall determine the number of posters
2 required and their location.

3 **3.1.** The Petitioner shall bear the expense of posting.

4 **3.2.** The sign posters shall be erected by the Petitioner perpendicular to the road which serves
5 as the mailing address of the subject property.

6 **3.3.** The Department of Planning and Zoning shall create the required posters with written
7 instructions for placement within two days of the matter being docketed by the Board
8 Administrator.

9 **3.4.** Signs and instructions for placement shall be picked up by the Petitioner, by appointment,
10 from the Board of Appeals Administrative offices.

11 **4. Affidavit of Posting.** The Board of Appeals shall prescribe the form and contents of the
12 Affidavit of Posting to be used by the Hearing Authority.

13 **4.1.** At the time of the initial hearing, the Appellant shall sign the required affidavit stating that
14 the sign was posted as required, and the affidavit shall be entered into the official record
15 as a preliminary matter on the day of the hearing.

16 **4.2.** The Appellant shall provide a printed photo of each sign installed as directed, and the
17 image(s) shall be attached to the affidavit.

18 **4.3.** The Petitioner shall provide the Board Administrator with two copies of the required
19 affidavit with original signature(s).

20 **4.4.** The required Affidavit of Posting can be accessed online at the Board of Appeals website
21 at <https://cc.howardcountymd.gov/zoning-land-use/board-appeals> or in the Board of
22 Appeals Rules Appendix.

1 **5. *Posting for Other Administrative Appeals heard Denovo.*** If a Petitioner cannot post a property
2 because the Petitioner does not own the property, then the Petitioner shall send a copy of the
3 petition and written notification of the place, time, and date of the hearing to the property
4 owner.

5 **5.1.1.** The Petitioner shall file an Affidavit of Written Notification with the Board
6 Administrator.

7 **5.1.2.** The required Affidavit of Written Notification can be accessed online at the Board
8 of Appeals website at [https://cc.howardcountymd.gov/zoning-land-use/board-](https://cc.howardcountymd.gov/zoning-land-use/board-appeals)
9 [appeals](https://cc.howardcountymd.gov/zoning-land-use/board-appeals) or in the Board of Appeals Rules Appendix.

10 **6. *Posting for Clarification or Revocation of a Conditional Use When the Department of***
11 ***Planning and Zoning is the Petitioner.*** The Department of Planning and Zoning shall take the
12 following actions.

13 **6.1.** Send written notification of the place, time, and date of the initial hearing to the adjoining
14 and confronting property owners and;

15 **6.2.** Post the property with signs as required.

16 **7. *Compliance with Posting Requirements.*** If any question arises regarding compliance, the
17 Petitioner must prove compliance.

18 **7.1.** If the Board determines that the Petitioner has substantially complied with the public
19 notice requirement, the Board may elect to proceed with the hearing.

20 **7.2.** If the Board determines that the Petitioner has made a good faith effort to comply with the
21 posting requirements, the Board may grant the Petitioner a reasonable opportunity to
22 correct the noncompliance.

1 7.3. If the Board determines that the Petitioner has not made a good faith effort to comply with
2 the posting requirements, the Board shall dismiss the petition.

3
4 **Rule 5.0. Meetings and Hearings.**

5 1. *Quorum.* A majority of the Board of Appeals (three or more members) constitutes a quorum.
6 A quorum shall be present during the entirety of any Board meeting or hearing.

Commented [NR2]: Comment by Robbyn Harris:
"the quorum of 3 people seems to conflict with the alternate language in section 2.1 from page 3 of 39, if the alternate language is adopted."

7 1.1. Board members who participate in meetings virtually shall have their cameras on and be
8 visible at all times practicable while the meeting is in session.

9 1.2. When any Board member or other party to a hearing participates virtually, the Chairperson
10 shall conduct a preliminary roll call to ensure all participants have working audio and
11 video technology.

12 2. *Scheduled by Chairperson.* The Board of Appeals shall hold meetings as scheduled by the
13 Chairperson, including preliminary hearings when the Chairperson deems them necessary. The
14 Board of Appeals shall not conduct meetings which include an opportunity for public
15 testimony on any day prohibited by Howard County Code or policy, including on which Rosh
16 Hashanah, Yom Kippur, Eid Ul Fitr, Eid Ul Adha, Lunar New Year, or Diwali is observed.

Commented [NR3]: Comment from Felita Phillips:
"I want to strike it (this language) from this section and move it to the Postponement section with a more general wording so that it includes all religions and cultural celebrations."

17 3. *Open to the Public.* The public is allowed to attend and observe any open session of the Hearing
18 Authority. Except when authorized by law or when the presiding official expressly invites
19 public testimony, questions, comments, or other forms of public participation, no member of
20 the public attending an open session may participate.

Commented [NR4]: Comment by Robbyn Harris:
"I think the Board of Appeals should not set holidays and should follow the Howard County existing holiday schedule as approved and adopted yearly by the county"

21 4. *Disruptive Conduct.* A person attending an open public meeting may not engage in any
22 conduct, including visual demonstrations such as the waving of placards, signs, or banners,

1 that disrupts the session or interferes with the right of members of the public to attend and
2 observe the session. The presiding official may clear the room of disruptive individuals or
3 recess the meeting or hearing while order is restored.

4 **5. *Recording, Photographing, and Broadcasting of Open Session.*** A member of the public,
5 including any representative of the news media, may record discussions at an open session if
6 the recording device does not disturb people observing or participating in the session. The
7 presiding officer may restrict the movement of a person using a recording device if such
8 restriction is necessary to maintain the orderly conduct of the session.

9 **6. *Recording Not Part of Record.*** A recording of an open public session made by a member of
10 the public, or any transcript derived from such a recording, may not be deemed a part of the
11 record of any proceeding.

12 **7. *Open Hearings.*** Evidence shall be presented to the Board of Appeals only in hearings open to
13 the public. No member of the Hearing Authority or their staff shall communicate with anyone
14 other than the Board's legal advisor, administrative staff, or another Board member regarding
15 the merits of a case before issuance of the final written decision and order.

16 **8. *Ex Parte Prohibited.*** All communications between interested parties and the Hearing Authority
17 regarding any specific aspect of a docketed matter must be in writing and submitted as a motion
18 to the Board Administrator. If a response is needed, it will be provided in writing.

19 **9. *Place and Time of Hearings and Meetings.*** The Board of Appeals hearings and meetings shall
20 be held in the George Howard Building, Ellicott City, Maryland, unless the Chairperson
21 schedules otherwise. The Board of Appeals meets up to once a week.

~~9.1. 9.1. Meetings shall generally alternate between daytime sessions, lasting up to eight (8) hours, and evening sessions, lasting up to four (4) hours. Upon the appointment of a new Board member, the established schedule shall be confirmed with that individual. Schedules may be modified as necessary. Generally, meetings alternate between daytime sessions and evening sessions, depending upon the business.~~

~~9.2. 9.2~~ Quarterly work sessions, when needed, are dedicated to Board members' continuing education (1-1.5 hours) and may be part of an evening, day, or stand-alone session.

~~9.3. 9.3~~ When needed, work sessions may be scheduled to address administrative matters unrelated to a particular case.

10. Witness Participation. Any member of the public may request to testify at any meeting during which the Board accepts testimony.

10.1. Individuals wishing to testify shall sign up online at the Board of Appeals website before or on the day of a meeting or hearing.

10.2. Members of the public who appear in person and wish to testify but did not sign up online in advance shall use the public access computer in the hearing room to complete the online sign-up registration process.

10.3. The Petitioner and any supporting witness(es) who wish to testify in a docketed matter must adhere to these Rules before being called to testify during a hearing.

10.4. Any person opposing a petition who wishes to testify in a docketed matter must adhere to these Rules before being called to testify during a hearing.

10.5. Any person wishing to testify in opposition to a docketed petition must do so before the end of the Petitioner's case, after which public testimony registration will be closed.

1 **11. Continuances.** Hearings that are continued at the conclusion of a session shall have the day
2 and time of any subsequent session announced by the Chairperson immediately before the
3 hearing is recessed unless a continuation date was previously noticed. It is unnecessary to
4 repost a property following the completion of an initial session.

5 **12. Postponements.**

6 **12.1.** All requests for postponement must be filed as a motion detailing compelling
7 circumstances for a delay and must include necessary supporting documentation.

8 **12.2.** Motions shall be addressed to the Chairperson, and received by the Board
9 Administrator as soon as the need for postponement is known or anticipated. Absolutely
10 no oral requests will be allowed or considered.

11 **12.3.** No requests for postponement of a hearing shall be granted absent compelling
12 circumstances. The following are examples of compelling circumstances that may be
13 considered.

14 **12.3.1. Hearing Date Conflict:** The first case set takes precedence.

15 **12.3.2. Death or Serious Illness.** Serious illness of, or death in the family of, a party,
16 counsel, or necessary witness.

17 **12.3.3. Conflicting Vacation Schedule.** Vacations out of the country where virtual
18 attendance is impracticable and scheduled before the hearing date was set.

19 **12.3.4. Hearing Carryover.** A party or counsel becoming involved in a carryover matter in
20 another jurisdiction.

21 **12.3.4.** [REDACTED]

22 [REDACTED]

1 **12.4.** All postponement motions shall be filed as soon as possible but no later than five
2 days following the issuance of the Board's scheduling order, absent prior written
3 permission from the Chairperson.

4 **12.5.** Motions filed incorrectly or immediately preceding the set hearing date will not
5 receive a ruling, and named parties must appear on the scheduled date.

6 **12.6.** Failure by a named party to appear as ordered may result in the immediate
7 disposition of a matter.

8 **12.7.** If a postponement is granted for an initial hearing date, the Petitioner shall repost
9 the property with the new hearing date and time. The party filing the motion to postpone
10 shall bear any expense associated with reposting.

11 **12.8.** Upon a party's third request for postponement, the Board may dismiss the petition
12 by a majority vote.

13 **13. Correspondence.** Written correspondence submitted to the Board without the required written
14 certification shall immediately be rejected and returned by the Board Administrator. The
15 correspondence shall not become part of the record, and the Board shall not consider the
16 communication.

17 **14. Pending Cases in Court.** The Board shall conduct a limited preliminary hearing for any
18 docketed case where it is alleged that the same matter is pending in a court of law. The sole
19 purpose of the preliminary hearing shall be to determine if the docketed petition involves
20 substantially the same issues as a case already filed and pending in a court of law.

21 **14.1.** If the Board determines that the two cases involve substantially the same issues, no
22 further hearings shall be conducted, and the Board Administrator shall change the case

1 status to "Pending" until an interested party provides written notification to the Board
2 Administrator that the court of law has issued a final decision. Upon receiving such
3 notification, the matter will be moved to the Board's "Active" case calendar and scheduled
4 for a hearing at the earliest feasible date.

5 **14.2.** If a named party fails to notify the Board within 45 days after the court's final
6 decision issuance, the Board may, by its initiative or motion of another, dismiss the
7 docketed matter without further notice.

8
9 **Rule 6.0. Cases.**

10 The Board of Appeals adjudicates cases falling into two main categories. The second of the
11 two categories is further divided into two distinct subcategories, each defining the applicable
12 scope of review.

13 **1. Venue.** When submitting a Petition for Appeal, the Appellant must choose to have the case
14 heard by either a Hearing Examiner or the Board of Appeals, unless otherwise prohibited.

15 **1.1.** Cases decided by a Hearing Examiner may be further appealed to the Board of Appeals
16 and to a court of law in accordance with these rules.

17 **1.2.** Decisions made by the Board of Appeals may be appealed to a court of law in
18 accordance with these rules.

19 **4.2. Timeliness.** An individual wishing to appeal any final order, decision, requirement, or
20 interpretation made by an administrative official in the enforcement of any matter must file
21 an appeal petition within 30 days of the date of that administrative decision unless the law
22 provides a different time period or method for appeal.

1 **2.3.L** *Land Use Matters Under Original Jurisdiction.* Unlike appellate jurisdiction, when a higher
2 tribunal reviews a lower tribunal's decision, original jurisdiction means the Board can hear
3 and decide a case for the first time before any appellate review by a court of law. Some land
4 use cases, including Conditional Uses, Variances, and Nonconforming Uses, may have a
5 hearing conducted by a Hearing Examiner. A decision of the Hearing Examiner may be
6 appealed, leading to a De Novo review by the Board. During the Board's review, a new
7 hearing is conducted, and the case is reconsidered from the beginning without regard to any
8 previous findings or legal conclusions. Parties are allowed to introduce new evidence and
9 present new arguments.

10 **3.4** *Appeals of an Administrative Agency Decision.* These cases involve contested matters
11 resulting from any final order, decision, requirement, or interpretation made by an
12 administrative official to enforce any regulated matter. The cases are further categorized into
13 two subcategories. Regardless of the subcategory, the standard for review is based on
14 whether the agency decision was erroneous, arbitrary, capricious, or contrary to law. The
15 distinction between subcategories is based on whether a quasi-judicial hearing was conducted
16 and if an official record was developed during the administrative agency decision process.

17 **3.1.4.1.** *De Novo Appeals of an Administrative Agency Decision.* This category includes
18 subject matters involving decisions by the Department of Planning and Zoning in
19 response to alternate compliance requests and Planning Board decisions related to site
20 development plans.

21 **3.1.4.1.1.** A Hearing Examiner may initially hear and rule on these cases. An
22 aggrieved party may appeal the Hearing Examiner's decision to the Board of
23 Appeals. During a hearing before the Board, no consideration is given to any prior

1 rulings, findings of fact, or conclusions of law made by the Hearing Examiner. The
2 Board's hearing is based on the original Administrative Agency's action, not the
3 Hearing Examiner's decision.

4 3.1.2.4.1.2. Parties to the matter may call witnesses, introduce new evidence, and
5 present new arguments.

6 3.2.4.2. *On the Record Appeals of Administrative Agency Decisions.* This category
7 includes decisions by the Planning Board or Animal Matters Board following a quasi-
8 judicial public hearing.

9 3.2.1.4.2.1. These cases are not subject to review by a Hearing Examiner and must be
10 appealed directly to the Board of Appeals.

11 3.2.2.4.2.2. The Administrative Agency involved must have conducted a quasi-judicial
12 public hearing during which an official record was created.

13 3.2.3.4.2.3. The Board's scope of review during the appeal is confined to the
14 established record. No new evidence or witnesses may be introduced. Arguments
15 before the Board must focus solely on the legal basis for whether the Agency's
16 decision was erroneous, arbitrary, capricious, or contrary to law.

17 4.5. *Attendance.* Each named party in a docketed case and Regular Board member is expected to
18 attend all meetings and hearings in person, absent compelling circumstances.

19 5.1. *Virtual Participation.* Any Board member requesting to participate virtually must
20 request permission in writing from the Chairperson. Permission shall only be granted ~~for~~
21 ~~in case of~~ compelling circumstances. ~~The following are examples of such circumstances:~~
22 ~~3.1.1. Illness or family emergencies that prevent the Board member from attending in~~
23 ~~person~~

1 ~~5.1.2. Pre-scheduled vacation conflicting with the hearing date.~~

2 ~~4.1. 5.1.3. Schedule changes of prior commitments that prevent the Board member~~
3 ~~from attending in person.~~

4 ~~4.2.~~5.2. *Absence.* Any Board member unable to attend a scheduled hearing or meeting
5 must notify the Chairperson and Board Administrator in writing as soon as the member
6 becomes aware of their anticipated absence. The Chairperson shall immediately request
7 an Alternate member participate as defined by these rules.

8 ~~5.3. The Board Administrator shall provide written notification to the Chairperson and Board~~

9 ~~Clerk any time a Regular or Alternate member has accumulated three absences within 12~~

10 ~~months. The Chairperson shall notify the County Council and request action, including~~

11 ~~removing and replacing the delinquent Board member. The Board Administrator shall~~

12 ~~provide written notification to the Chairperson and Board Clerk whenever a Regular or~~

13 ~~Alternate member has accumulated three (3) unexcused absences within a 12-month~~

14 ~~period. The Chairperson shall notify the County Council and request appropriate action,~~

15 ~~which may include the removal and replacement of the delinquent Board member.~~

16 ~~Examples of excused absences include:~~

17 ~~5.3.1. Serious Illness~~

18 ~~5.3.2. Death of a family member~~

19 ~~5.3.3. Family emergencies that prevent the Board member from attending the hearing~~

20 ~~5.3.4. Pre-scheduled vacations outside the country where virtual attendance is~~

21 ~~impractical~~

22 ~~5.3.5. Schedule Change of Prior Commitment: A schedule change of a previously~~

23 ~~existing commitment that prevents the Board member from attending~~

1 ~~5.3.6. Recusal due to a conflict of interest or other concern~~

2 ~~4.3. -~~

3 ~~5.6.~~ *Voting*. Only Board members who participated during all portions of a hearing or other
4 meeting of the Board shall be eligible to vote on a matter or decide a docketed case. A
5 decision shall have the concurrence of a majority of the Board.

6
7 **Rule 7. Ethical Service.**

- 8 **1.** A member of the Hearing Authority shall withdraw from participating in any matter or
9 proceeding in which personal bias or other factors may render the member unable to remain
10 impartial or in which an appearance of impropriety may reasonably be inferred from the
11 facts.
- 12 **2.** To avoid even the appearance of impropriety, a member must disqualify themselves as to those
13 matters and questions before the Hearing Authority in which a member has a direct personal
14 or pecuniary interest in the outcome, which differs from the interest of other citizens.
- 15 **3.** Any member who believes they may have a conflict of interest or other potential
16 disqualifying concern shall request a written opinion from the Howard County Ethics
17 Commission before participating. Hearing Authority members may voluntarily recuse
18 themselves from a matter without seeking an advisory opinion from the Ethics Commission.
- 19 **4.** Members acknowledge that by participating in a hearing or session, they have evaluated both
20 the subject matter and the parties involved, and they are not aware of any conflicts of interest
21 or reasons that would prevent them from fully participating.

1 5. The Chairperson or Board Clerk shall immediately notify the County Council, in writing, if
2 any member fails to comply fully with the Howard County Ethics Law. Such written
3 notification shall request that the member be removed from their position with the County.

4 6. Due to the complexity of the quasi-judicial process and the Board's authority to limit
5 individual property rights, **regular** Board members shall not participate as members of any
6 other municipal county board, commission, or task force while serving as a member of the
7 Board of Appeals. **This rule shall apply exclusively to Board members appointed subsequent**
8 **to the effective date of this rule**

9 7. Except for Board membership, Board of Appeals members shall not be employed by the
10 Howard County government nor serve as an elected official to public office in Howard
11 County.

12 8. Each member of the Hearing Authority shall file a completed financial disclosure statement
13 and Employee Ethics Acknowledgement form no later than April 30th of each year. The
14 Board Administrator shall retain the completed forms as law or policy requires.

15 No later than June of each year, the Board Administrator shall issue a written report to the
16 Hearing Authority containing each member's filing status compliance. Any member who fails to
17 submit the required disclosure shall be disqualified from participating in meetings or hearings
18 until they become compliant.

19
20 **Rule 8. Record of Hearings.**

21 1. *Official Record.* The Hearing Authority shall maintain an official record of its proceedings in
22 each case as required by law and policy. This record shall include all testimony and exhibits
23 and a recording of the proceedings.

Commented [NR5]: Comment from Jean Xu:
This rule unnecessarily restricts the ability of Board members to engage in broader civic duties and contribute to their community in various capacities. Participation on multiple boards, commissions, or task forces can yield valuable cross-functional insights and a more comprehensive understanding of community issues, thereby enhancing the decision-making capabilities of the Board of Appeals. Additionally, this rule may discourage qualified individuals from serving on the Board by limiting their involvement in other critical local governance matters, consequently reducing the pool of experienced candidates. Regarding concerns about the time commitment associated with serving on multiple boards, commissions, and task forces, it should be noted that most of these entities do not convene frequently and typically do not require substantial work outside of scheduled meetings, thereby imposing minimal time commitments.

1 **2. *Transcription of Testimony.*** All requests for transcriptions of testimony shall be made in
2 writing to the Board Administrator. The requesting party shall pay the cost for transcription
3 before the service is performed. The transcriber shall certify the accuracy of any transcript.
4

5 **Rule 9. Evidence.**

6 **1. *Technical Reports and Experts.*** A party wishing to submit a technical report or similar
7 documentary evidence for the Board's consideration must file one digital copy and ~~seven-ten~~
8 hard copies of the proposed exhibit with the Board Administrator at least ten days before the
9 date of the scheduled hearing. The party must also provide one digital copy ~~or hard~~ to an
10 opponent in a contested case ~~at least ten days before the date of the scheduled hearing~~. If
11 technical reports are filed late, the Board may elect to continue the hearing to a later point to
12 allow adequate time for review of the proposed exhibit.

13 **2.** Expert testimony may be admitted, in the form of an opinion or otherwise, if the testimony
14 will assist the Board in understanding the evidence or determining a fact in issue. The Board
15 may only qualify a witness as an expert after evaluating the following criteria.

16 **2.1.** Whether the witness is qualified as an expert by knowledge, skill, experience, training,
17 or education; and

18 **2.2.** The appropriateness of the expert testimony on the particular subject; and

19 **2.3.** Whether a sufficient factual basis exists to support the expert testimony.

20 **3. *Admissibility.*** Any evidence which would be admissible under the rules of evidence
21 applicable in judicial proceedings in the State of Maryland shall be admissible in hearings
22 before the Board of Appeals.

1 **3.1.** The technical rules of evidence do not bind the Board, but the Board will apply those
2 rules so that probative evidence can be conveniently brought forth.

3 **3.2.** The Board may exclude immaterial or unduly repetitious testimony and other evidence.

4 **3.3.** The Board may limit the number of witnesses when testimony is cumulative.

5 **4. Board Questions.** Board members participating in a hearing shall have the authority to ask
6 questions of witnesses before closing the public hearing and commencing deliberations. If,
7 during deliberations, the Board desires further information from a party, it shall reopen the
8 presentation of evidence portion of the hearing and pose the question. The Board may allow
9 the Appellant, Opponent, and the County Solicitor to respond to the specific question(s)
10 before resuming deliberations.

11
12 **Rule 10. Admission of Evidence.**

13 **1.** Decisions of the Board shall be based only on competent materials and substantial evidence
14 in the record. The Chairperson shall function to keep discussion and deliberation focused on
15 applicable standards and relevant evidence. The following process shall be used when a party
16 wishes to produce and enter evidence into the record during a hearing.

17 **1.1.** The moving party shall remain seated, absent the Chairperson's permission to the
18 contrary, and provide ~~eight~~ **ten** hard copies of the item to the Board Administrator.

19 **1.1.1.** Parties are encouraged to provide an electronic copy of the item to opposing
20 parties and the Administrator before the hearing.

21 **1.2.** The Administrator shall provide one copy to the opposing party and the Board's legal
22 advisor, and one copy to each member. The Administrator shall retain one copy, which

1 shall serve as the only official copy of the item in the record. The item shall be marked
2 for identification only, and the Administrator shall announce how it will be labeled.

3 **1.3.** The moving party shall ask the witness to identify the marked item. The witness should
4 provide a brief and limited description of the item and not testify as to the specific
5 content or meaning. The witness shall provide how the marked item relates to their
6 testimony and the contested matter.

7 **1.4.** Once the witness has finished answering, the moving party shall seek to have the item
8 entered as evidence.

9 **1.5.** After considering any opposition to the exhibit, the Chairperson shall rule on the request
10 to move the item into evidence. If the Chairperson denies the request, the item shall
11 remain in the record for identification purposes only; however, it shall not be admitted as
12 evidence.

13 **2.** *By reference.* Public records, previous decisions and orders of the Board of Appeals,
14 technical staff reports, Planning Board recommendations, and Howard County laws and
15 regulations pertaining to the particular case shall be received by the Board of Appeals for
16 consideration at least 21 days before an initial hearing. The materials shall be included and
17 accessible in the public online record for the case.

18 **3.** *Exhibits.* Exhibits and plats admitted into evidence may not be mounted and shall be folded
19 to a maximum size of 9 inches by 14 inches. An exact duplicate of the exhibit may be
20 mounted and used for presentation purposes during the hearing.

21 **4.** *Hearsay Evidence.* Witness testimony offered as hearsay may be accepted for either
22 supplementing or explaining any direct evidence, provided it is not offered to prove the truth

1 of the matter asserted. Hearsay evidence shall not, in and of itself, be considered sufficient to
2 support a finding or decision.

3 **Rule 11. Motions.**

4 1. *Form.* A party may request the Board to address a matter by filing a written request as a
5 motion to the Board.

6 2. *Certification.* All motions shall include certification that a copy was provided to all persons
7 known to have an interest in the case, including but not limited to the Petitioner, the property
8 owner, the Administrative Agency, and any person entitled to written notification under these
9 Rules. The certification shall state, "Any person interested in responding to the motion shall
10 file a written response with the Board within five days of the date that the motion was filed."
11 The Board may rule on the pending motion any time ten business days after the original
12 filing date.

13 3. *Formatting.* Except as otherwise provided, any paper filed with the Board shall be 8½ inches
14 wide and 11 inches long, shall have a top margin and left-hand margin of not less than 1 inch,
15 and shall be without a back or cover. All writing shall be in block letter, 11-point font, and
16 double-spaced.

17
18 **Rule 12. Appearances Before the Board of Appeals.**

19 1. *Parties.* An individual or any other legal entity may become a party to proceedings before the
20 Board by registering online. Parties must provide their name and address or the name and

1 address of the entity they represent before closing the Petitioner's case unless directed
2 otherwise by these Rules.

3 **2. Appearance.** Individuals may appear before the Board provided; they are a party or are duly
4 authorized to represent a party to the proceedings before the Board. All parties are required to
5 present their case efficiently. Delaying proceedings will not be tolerated. Any party
6 employing egregious dilatory tactics shall be removed from participating further in the case.

7 **3. Parties to Administrative Appeals from Notice of Violation.** Parties to an administrative
8 appeal from the issuance of a notice of violation of County laws or regulations are limited to
9 the Petitioner and the Administrative Agency issuing the violation notice.

10 **4. Parties to Administrative Appeals on the Record.** Parties to an administrative appeal to be
11 heard by the Board on the record are limited to the Administrative Agency and the parties of
12 record before the Administrative Agency.

13 **5. Spokesperson.** When a group of individuals appears in opposition to a petition, the
14 Chairperson may request them to elect a spokesperson. The spokesperson shall have the
15 power to cross-examine witnesses, call witnesses, introduce evidence on behalf of the group,
16 object to the introduction of evidence, make opening and closing statements, and act in a
17 representative capacity solely on behalf of those individuals electing the spokesperson.
18 Individuals not electing to be represented by a spokesperson may act independently.

19 **6. Representation by Attorney-at-Law.** Any party in a hearing may be represented by an
20 attorney-at-law admitted to practice law before the Court of Appeals of Maryland. An
21 attorney, acting under an agreement with a client for legal representation, shall file a written
22 notice of appearance with the Board before appearing on a party's behalf at a hearing. The

1 notice of appearance shall list the names and addresses of individuals the attorney represents
2 and the attorney's firm name, their name, address, and telephone number.

3 7. *Withdrawal of appearance.* An attorney may withdraw their appearance by providing the
4 Board with written notice; however, the Board may deny the motion to withdraw if it would
5 cause undue delay, prejudice, or injustice.

6 **Rule 13. Subpoenas.**

7 **1. Issuance.** The Board may issue subpoenas on its own initiative and may grant or deny
8 requests by parties to the proceeding for subpoenas.

Commented [GR6]: See 2.113 HoCo Code

9 ~~1.2~~ **1.2** *Requests.* A party entitled to the issuance of a subpoena under these Rules shall request the
10 issuance of a subpoena through written motion. Requests for subpoenas must be relevant,
11 reasonable in nature and scope, and not oppressive. A motion for subpoena template form
12 can be found on the Board of Appeals website at [https://cc.howardcountymd.gov/zoning-](https://cc.howardcountymd.gov/zoning-land-use/board-appeals)
13 [land-use/board-appeals](https://cc.howardcountymd.gov/zoning-land-use/board-appeals) or in the appendix of these Rules.

14 ~~2.3~~ **2.3** A motion for subpoena shall include the following information:

15 ~~2.1.1.3.1.1.~~ **2.1.1.3.1.1.** The name and address of the witness whose testimony is to be compelled.

16 ~~2.1.2.3.1.2.~~ **2.1.2.3.1.2.** A clear and concise proffer of the content and relevance of the expected
17 testimony is needed.

18 ~~2.1.3.3.1.3.~~ **2.1.3.3.1.3.** A list of all documents or items sought to be produced.

19 ~~2.1.4.3.1.4.~~ **2.1.4.3.1.4.** Regulatory citations in support of the request

20 **4. Issuance and service of a subpoena.**

21 ~~3.4.1.~~ **3.4.1.** The Chairperson shall consider and decide on a motion for subpoena within five
22 days of receipt.

1 ~~3.1.4.2.~~ If granted, the subpoena shall be signed by the Chairperson and promptly
2 delivered to the person requesting the subpoena, who shall be responsible for arranging
3 service for the subpoena at least seven days before the date of the hearing.

4 ~~3.2.4.3.~~ The person serving the subpoena shall certify through an Affidavit of Service that
5 the subpoena was served personally or by certified mail. An Affidavit of Service
6 template form can be found on the Board of Appeals website at
7 <https://cc.howardcountymd.gov/zoning-land-use/board-appeals> or in the appendix of
8 these Rules.

9 ~~3.3.4.4.~~ The Chairperson shall also rule on any motions to quash or modify a subpoena.

10 ~~4.5.~~ If a motion to grant, quash, or modify a subpoena is denied, a party may appeal the
11 Chairperson's decision by filing a motion for reconsideration. The full Board of Appeals will
12 hear and decide the motion for reconsideration during a public hearing.

13 ~~5.6.~~ *Compliance.* A person who is subpoenaed to appear at a hearing or produce documents may
14 be held in contempt if the person unjustifiably:

15 ~~5.1.6.1.~~ Fails or refuses to comply with a subpoena for appearance.

16 ~~5.2.6.2.~~ Appears but fails or refuses to testify under oath; or

17 ~~5.3.6.3.~~ Refuses to comply with a directive of the Chairperson at the hearing to answer a
18 relevant question or to produce a record, including an electronic record, that has been
19 subpoenaed unless the directive is overruled by a majority vote of the members of the
20 Board of Appeals who are present at the hearing.

21 ~~6.7.~~ *Enforceability.* By a majority vote, the Board of Appeals may direct their legal advisor to
22 immediately apply for a civil contempt citation for any party who fails to comply with a

1 subpoena. The Board's advisor shall request a court of competent jurisdiction to enforce the
2 subpoena, compelling the attendance of witnesses and requiring the production of books,
3 papers, documents, and other materials relevant to the case as detailed in the subpoena.

4
5 **Rule 14. Proceedings.**

- 6 1. The Board of Appeals is a quasi-judicial body, meaning the process is like that of a court.
7 Proceedings before the Board shall be governed by the Maryland Annotated Code, Howard
8 County Code, and established case law. The Board is empowered to determine a person's or
9 entity's rights under certain County ordinances. Matters under the jurisdiction of the Board of
10 Appeals include but are not limited to hearings on appeals and reviews of any final order,
11 requirement, decision, or determination made by an administrative agency or body and
12 hearings on applications for permits or variances. Matters concerning such rights may only
13 be determined by the Board after conducting a quasi-judicial proceeding.
- 14 2. *Questioning.* Questioning shall be brief, pertain only to statements made by the witness, and
15 shall not be preceded by statements or speeches. The questioning shall be interrogatory in
16 nature and shall not be argumentative nor make allusions to the personality or motives of the
17 witness. At the discretion of the Chairperson, questions or cross-examination shall be put in
18 written form and asked by the Board's legal advisor.
- 19 3. *Questioning a petitioner's witness.* Typically, the opposition or a spokesperson cross-
20 examines, but any individual wishing to question the Petitioner's witness may do so with
21 leave from the Chairperson. The Chairperson may grant this leave after recognizing the
22 individual who wishes to question the Petitioner's witness and after the individual has given

1 their name, home address, and, if appropriate, its location with reference to the property
2 which is the subject of the hearing.
3

4 **Rule 15. De Novo Hearing Procedures.**

5 **1. Oath.** An individual testifying shall give his or her name and address and take the following
6 oath given by the Chairperson: "Do you solemnly promise to speak truthfully in the
7 testimony you are about to give?"

8 **2. Order of Presentation.**

9 **2.1.** The County Solicitor introduces reports and official documents pertaining to the case.

10 **2.1.1.** Opening statements by opposing parties.

11 **2.1.2.** Petitioner's presentation.

12 **2.1.3.** Direct examination of witnesses.

13 **2.1.4.** Cross-examination of witnesses by the opposition, by Board members, and by the
14 County Solicitor.

15 **2.1.5.** Re-direct examination of Petitioner's witness.

16 **2.1.6.** Re-cross-examination of Petitioner's witnesses.

17 **2.1.7.** Opposition's presentation.

18 **2.1.7.1.** Direct examination of opposition's witnesses.

19 **2.1.7.2.** Cross-examination of opposition witnesses by the Petitioner, by Board
20 members, and by the County Solicitor.

21 **2.1.7.3.** Re-direct examination of opposition's witnesses.

22 **2.1.7.4.** Re-cross examination of opposition's witnesses.

1 **2.2. Petitioner's rebuttal.** The Petitioner may present evidence to rebut any evidence
2 introduced by the opposition, but no new line of testimony may be introduced.

3 **2.3. Petitioner's summation.**

4 **2.4. Opposition's summation.**

5 **3. Burden of Proof.** The burden of proof is one of a preponderance of the evidence. By
6 competent, material and substantial evidence, the Petitioner must show that they are entitled
7 to the relief requested and that the request meets all prescribed standards and requirements.

8 **4. The Board's Action.** At the end of the presentation, the Board of Appeals will deliberate
9 during the open public meeting. The Board may grant or deny the petition, stating its findings
10 of fact and conclusions of law through the issuance of a written final decision and order.

11 Alternatively, the Board may take the case under advisement for further deliberation and later
12 decision.

13 **4.1.** The Board may not consider evidence from either side after the hearing is concluded.

14 **4.2.** The Board may order legal memoranda to be submitted by the Petitioner and opponent
15 summarizing their arguments and proposed findings of facts and conclusions of law.

16

17 **Rule 16. Administrative Appeal Hearing Procedures.**

18 **1. De Novo Appeals.** The procedures outlined in Rule 15 apply to administrative appeals heard
19 De Novo, except for the burden of proof.

20 **1.1. Burden of proof.** In an appeal of an Administrative Agency's issuance of a notice of
21 violation of County laws and regulations, the burden of proof is upon the Administrative

1 Agency to show that the respondent has violated the laws or regulations in question by a
2 preponderance of the evidence.

3 **1.2.** In all other De Novo appeals not related to a notice of violation, the burden of proof is
4 upon the Appellant to show that the action taken by the Administrative Agency was
5 clearly erroneous, arbitrary, capricious, or contrary to law.

6 **2. Appeals On the Record.**

7 **2.1. Record transcript.** Within 30 days of filing an appeal on the record from an action of an
8 Administrative Agency, the Appellant shall file one digital copy and one hardcopy of the
9 transcript record of the hearing being appealed with the Board Administrator and shall
10 serve one digital copy of the transcript record with the Administrative Agency. The
11 Board Administrator shall provide each Board member with a copy of the transcript
12 within two days following receipt.

13 **2.2. Memorandum of Appellant.** Within 15 days of filing the transcript, the Appellant shall
14 file a memorandum stating concisely all points on which the appeal is based and an
15 argument supporting each point.

16 **2.2.1.** The Appellant shall file one digital copy and one hard copy of the memorandum
17 with the Board Administrator and shall serve one digital copy to the Administrative
18 Agency. The Board Administrator shall provide each Board member with a copy of
19 the transcript within two days following receipt. The memorandum shall include:

20 **2.2.1.1.** Points of law;

21 **2.2.1.2.** References to legal authority;

22 **2.2.1.3.** Page citations of particular portions of the transcript record; and

1 **2.2.1.4.** Exhibits by number.

2 **2.3. Administrative Agency's reply memorandum.** Within 15 days of the Appellant's
3 memorandum being filed, the Administrative Agency shall file a reply memorandum
4 with the Board. The Agency shall file one digital copy and one hard copy of the
5 memorandum with the Board Administrator and shall serve one digital copy to the
6 Appellant. The memorandum shall answer concisely all points on which the appeal is
7 based and an argument against each point. The Board Administrator shall provide each
8 Board member with a copy of the transcript within two days of the submission. The
9 arguments shall include:

10 **2.3.1.** Points of law;

11 **2.3.2.** References to legal authority;

12 **2.3.3.** Page citations to particular portions of the record transcript; and

13 **2.3.4.** Exhibits by number.

14 **2.4. Sanctions for late filing of memorandum.**

15 **2.4.1.** If the Appellant fails to file the required memorandum in a timely manner, the
16 Board may dismiss the appeal.

17 **2.4.2.** If the Administrative Agency fails to file the required reply memorandum in a
18 timely manner, the Board may rule, on its own initiative, for summary judgment in
19 favor of the Appellant without further notice.

20 **2.5. Oral arguments.** The Board may entertain oral arguments based on the record. The
21 Board may limit the length of oral arguments.

1 **2.6. Burden of proof.** The burden of proof shall be on the Appellant to show that the action
2 taken by the Administrative Agency was clearly erroneous, arbitrary, capricious, or
3 contrary to law.

4 **2.7. The Board's Action.** The Board may dismiss, affirm, or modify the Agency's action.
5 Alternatively, the Board may remand the action to the Agency for further proceedings or
6 an alternate disposition.

7
8 **Rule 17. Decision and Order; Process and Issuance.**

9 **1. Decision and Order.** All docketed matters heard by the Board of Appeal shall receive
10 disposition through the issuance of a final decision and order.

11 **1.1.** The written decision and order of the Board shall be in writing and signed by the voting
12 Board members and the Board's legal advisor who prepared the document. The Board
13 Administrator shall attest it.

14 **1.2.** The Board's final decision and order shall include findings of fact and conclusions of
15 law.

16 **1.3.** The decision and order shall be made a part of the record of the proceedings, filed with
17 the Department of Planning and Zoning as part of the permanent record, and maintained
18 as part of the official records of the County.

19 **2. Dissenting or Concurring Opinion.** Any member(s) of the Board of Appeals who participated
20 in a hearing may file a dissenting or concurring opinion. Such dissenting or concurring
21 opinion(s) shall be made a part of the record of proceedings and included as part of the
22 Board's final decision and order.

1 **3. *Decision and order timeline.***

2 **3.1.** The Board shall deliberate and decide on each case no later than thirty days after all
3 parties have rested their case.

4 **3.2.** A written final decision and order shall be issued no later than sixty days after the Board
5 has deliberated and decided a case.

6 **3.3.** The Board's legal advisor shall provide the Board Administrator with a preliminary draft
7 version of the written decision and order, including findings of facts and conclusions of
8 law determined by the Board, no later than 30 days after the Board has rendered its
9 verbal decision during a public hearing.

10 **3.4.** The Board Administer shall provide each Board member with an electronic copy of the
11 preliminary draft decision and order within one day.

12 **3.5.** The Board shall direct their legal advisor to make any amendments to the draft decision
13 and order no later than five days after each Board member has received the draft
14 document for review.

15 **3.5.1.** Board member-directed amendments may include any concurrent or dissenting
16 opinion.

17 **3.6.** The Board's legal advisor shall provide a finalized written decision and order to the
18 Board Administrator no later than 45 days after the Board has rendered its oral decision
19 during a public hearing.

20 **3.7.** The Board Administrator shall provide each Board member with an electronic copy of
21 the unsigned final decision and order within one day.

1 **3.7.1.** The Board Administrator shall arrange for each Board member to review and sign
2 the decision and order within five days.

3 **3.8. Extension.** The Board, at the request of the County Solicitor, and with good and
4 sufficient reason, may extend the time for issuance of a written decision and order to no
5 later than 75 days after the Board issues its oral decision.

6 **3.8.1.** An extension of time shall be considered only during a public meeting.

7 **3.8.2.** The Board's legal advisor must notify named parties involved in a matter being
8 considered for an extension of time at least five days before the public meeting
9 where the extension will be discussed.

10 **3.8.3.** At the Chairperson's discretion, parties shall have the opportunity to briefly be
11 heard during a public hearing before the Board's deliberation and decision of an
12 extension request.

13 **3.9. Publication.** The Board Administrator shall electronically mail final decisions and orders
14 to each named party or their representatives within three days of receipt from the County
15 Solicitor.

16 **3.9.1.** The Board Administrator shall post the final signed decision and order on the
17 Board of Appeals website for public consumption within three days of receipt from
18 the County Solicitor.

19 **4. Appeals from Decisions of the Board.** Any person, officer, department, board, or bureau of
20 the County who believes they are aggrieved by a decision of the Board of Appeals may
21 appeal to the Circuit Court for Howard County within 30 days of the decision.

1 **4.1.** The Board of Appeals shall be a party to all appeals and shall be represented by the
2 Office of Law at any such hearing.

3 **4.2.** Once an appeal is filed in circuit court, the Board no longer retains jurisdiction and may
4 not suspend its decision and order or consider a motion for reconsideration.

5
6 **Rule 18. Revisory Power of the Board.**

7 **1. Request of a Party.** Within 15 days of the Board publishing a finalized written decision and
8 order, a party of record may file a motion for reconsideration. The Board shall consider the
9 written motion as soon as practicable, preferably during the next public hearing or meeting.

10 **1.1.** The Board may revise its decision and order if the party petitioning for reconsideration
11 establishes a mistake of fact or error of law.

12 **1.2.** The motion for reconsideration may include a request to suspend the decision and order.

13 **2. Process.** A party of record may file a written response to a motion for reconsideration within
14 five days following the filing of a motion for reconsideration.

15 **2.1.** The Board shall not consider new or additional evidence unless it is proven that such
16 evidence could not reasonably have been presented during the original hearing.

17 **2.2.** If the Board determines to revise its decision and order, the Board shall send a copy of
18 the revised decision and order to each party within the timelines specified within these
19 Rules.

20 **3. Clerical Error.** At any time, on its own initiative or by a motion of any party, the Board may
21 modify its decision to correct a clerical error.

1 **4.** *Time for Appeal to Circuit Court.* Filing a motion for reconsideration does not suspend the
2 time for filing an appeal to the circuit court unless the Board first suspends its decision and
3 order.

4
5 **Rule 19. Severability.**

6 If any clause, sentence, or part of these Rules is deemed invalid by a court of law, the
7 remaining provisions shall remain valid.

DRAFT