
RULES OF PRACTICE AND PROCEDURE
of the
BOARD OF APPEALS

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1 and Maryland State law, the Howard County Charter, or any applicable local Howard County
2 legislation, the latter shall prevail and govern.

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

5
6 **Definitions**

7 Terms used in these Rules shall have the definition provided in any standard dictionary
8 unless specifically defined below.

- 9 1. *Administrative Appeal.* Appeals from any final order, decision, requirement, or
10 interpretation made by an administrative official in the enforcement of any matter
11 authorized by the Maryland Code, Land Use, and as provided in Zoning Regulations.
- 12 2. *Administrative Agency.* A Board, Commission, Department or other unit of County
13 Government which is authorized by law to make rules or adjudicate contested cases.
- 14 3. *Affidavit.* A written statement, signed under penalties of perjury, affirming that the
15 statements it contains are factual based upon the affiant's personal knowledge or to the
16 best of the affiant's knowledge, information, and belief.
- 17 4. *Agency.* A Board, Commission, Department, or other unit of County Government
18 authorized by law to make rules or adjudicate contested cases.
- 19 5. *Appeal.* The complaint to a higher tribunal of an alleged injustice done or error
20 committed by an inferior one, whose judgment or decision the tribunal above is called
21 upon to correct or reverse.
- 22 6. *Appellant.* An individual or entity seeking review of a lower authority's decision.

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- 1 7. *Basis For Decision.* Findings supported by substantial evidence and comporting with due
2 process. Requires that the agency record contains sufficient relevant evidence that a
3 reasonable mind might accept as adequate to support the agency's conclusion. The
4 evidence must be both probative and reliable to satisfy this reasonableness test.
- 5 8. *Board of Appeals Administrative Office.* The physical office space where the public may
6 request assistance on matters within the jurisdiction of the Board of Appeals. The Board
7 Administrator and other support personnel staff the Office.
- 8 9. *Board of Appeals Administrator.* An individual who maintains case files, makes docket
9 entries, issues processes, and generally serves as the ministerial arm of the Board, as
10 further defined within this section.
- 11 10. *Board of Appeals Alternate Member.* A registered voter and resident of the County
12 appointed by the Council from a county-wide list of applicants as an At-Large member.
13 The member serves in a substitute capacity to hear and decide cases, as needed, at the
14 request of the Chairperson and only during the absence of a Board of Appeals Regular
15 Member. Alternate members serve a term defined by legislation and perform the duties as
16 detailed elsewhere in regulation.
- 17 11. *Board of Appeals Legal Advisor.* A lawyer who provides the Board with an informed
18 understanding of the Board's legal rights and obligations and explains their practical
19 implications. The legal advisor zealously asserts the Board's position under the rules of
20 the adversary system and acts as an evaluator by examining the Board's legal affairs and
21 reporting them to the client or to others.
- 22 12. *Board of Appeals Regular Member.* A registered voter and resident of Howard County
23 appointed by the County Council to serve for a term as defined by legislation. Board

1 members are entrusted to hear and decide appeals from decisions made by an
2 administrative officer or agency; hear and decide requests to vary a regulation of the
3 zoning ordinance (variance); hear and decide requests for conditional use approval; and
4 hear and decide a request to expand a nonconforming use or structure.

5 13. *Business Day*. Any day the Board of Appeals administrative office is open for the
6 transaction of public business.

7 14. *Case In Chief*. The portion of a hearing whereby the party with the burden of proof in the
8 case presents its evidence. The term differs from a rebuttal, whereby a party seeks to
9 contradict the other party's evidence.

10 15. *Conclusions of Law*. A brief explanation of the legal principle that applies to the facts. An
11 analysis of how the law supports the findings of fact. Decision based on legal precedents
12 or statutes.

13 16. *Concurring Opinion*. An independent opinion written by a Board member who agrees
14 with the majority opinion but offers additional comment or clarification.

15 17. *Conditional Use*. Certain land uses which are not permitted as a matter of right but may
16 be allowed if approved by the Board of Appeals.

17 18. *Contested Case*. A proceeding in which a person's legal rights, duties, or privileges are
18 required by law or constitutional right to be determined only after an opportunity for a
19 public hearing.

20 19. *Day*. Referring to a calendar day unless otherwise indicated.

21 20. *De Novo or De Novo Hearing*. A Latin term that means "anew," "from the beginning," or
22 "afresh." An appeal during which new evidence may be presented and new

1 determinations made. No weight is given to prior findings or conclusions. An appeal in
2 which a case is completely retried.

3 21. *Dissenting Opinion*: An independent opinion written by a Board member who disagrees
4 with the majority opinion.

5 22. *Docket*. A formal abridged record of the proceedings. The case file for a matter before the
6 Board.

7 23. *Egregious Dilatory Tactics*. Intentional actions taken by one party to cause delays or
8 postpone the resolution of a disputed matter. Strategies often employed to create stress
9 and hardship for the opposing party and to gain an unfair advantage.

10 24. *Ex Parte*. By and for one side only; partisan.

11 25. *Leading Question*. A type of questioning that suggests the answer. In general, leading
12 questions are not allowed during the direct examination of a witness.

13 26. *Legal Memorandum*. A written summary of a case submitted to the Board by the parties
14 involved in a contested matter. This memorandum is ordered at the discretion of the
15 Presiding official, who will also establish the page limit and submission deadline. Each
16 memorandum must include a brief statement of the questions for review, proposed
17 findings of fact, proposed conclusions of law, and any relied-upon exhibits. No new
18 evidence or exhibits shall be submitted via the legal memorandum.

19 27. *Filed*. The status of a document or other instrument when received and accepted by the
20 Board of Appeals Administrative Office. When computing a time for filing a document,
21 the last day shall be included. If the last day falls on a Saturday, Sunday, a recognized
22 holiday, or other day on which the Office is not open the entire day, the period runs until

1 the end of the next day on which the Office is open the entire day during official business
2 hours.

3 28. *Irrelevant*. Testimony or other offering not important or pertinent to the matter at hand or
4 an issue being considered. Synonymous with immaterial.

5 29. *Matter*. Any litigation, administrative proceeding, claim or any other representation,
6 except as expressly limited in a particular rule.

7 30. *Motion*. A request to the Board seeking specific action in a case. An application to the
8 Board of Appeals for an order shall be made by motion, which, unless made during a
9 hearing, shall be made in writing and set forth the relief or order sought.

10 31. *Majority vote*. Four-fifths.

11 32. *On the Record Appeal File*. The complete case file and a transcript of all proceedings
12 conducted by the lower reviewer.

13 33. *Opinion*. A written explanation or analysis of the reasoning behind the Board's decision,
14 including findings of facts and conclusions of law.

15 34. *Order*. A ruling or mandatory direction of the Board, including a command of the
16 Presiding official while performing administrative procedures or conducting hearing.

17 35. *Party*. A person or entity named or permitted to participate in a hearing before the Board.

18 36. *Petitioner*. A person or entity requesting the Board's review of a contested matter by
19 filing a petition for appeal.

20 37. *Proffer*. An offer of proof; a summary offer of information. During a hearing, a party may
21 tell the Board a summary of what the evidence would have shown, or witness would have
22 said, so the Board may determine admissibility or for other purposes. Proffers are made

1 for the sake of convenience, so the Board does not have to listen through lengthy
2 evidence deemed inadmissible or insignificant. A proffer can be a first offer or proposal.

3 38. *Preponderance of Evidence Standard*. If the proposition is more likely to be true than not
4 true. The standard is satisfied if there is a greater than fifty percent chance that the
5 proposition is true.

6 39. *Probative*. Information relevant to an issue and useful to prove or disprove a fact.

7 40. *Public Record*. A record maintained in a government office available for inspection by
8 the public.

9 41. *Rebuttal*. Evidence or arguments introduced to counter, disprove, or contradict an
10 opposing party's evidence or argument.

11 42. *Reliability*. Pertains not to relevancy but rather to credibility and whether the evidence is
12 worthy of belief.

13 43. *Remote Proceeding*. Any hearing or meeting conducted in whole or part by telephone,
14 video, or other audio-visual means, or by a combination of in-person, audio, and audio-
15 visual means. Also referred to as a virtual proceeding.

16 44. *Substantial Evidence Standard*. Meaning more than a mere scintilla. Requires that the
17 agency record contains sufficient relevant evidence that a reasonable mind might accept
18 as adequate to support the agency's conclusion. Satisfying the reasonableness test
19 requires the evidence to be both probative and reliable. Substantial evidence is a
20 deferential standard lower than preponderance of the evidence.

21 45. *Quasi-Judicial*. Having judicial character defined by the right to hold hearings and
22 conduct investigations into disputed claims and alleged infractions of rules and

1 regulations and to make decisions in the general manner of courts. Much like in a civil or
2 criminal case, the Board hears evidence and decides the facts.

3 46. *Special Exception*: See Conditional Use

4 47. *Substantive Amendment*. A modification that has a significant impact and rises above that
5 of a technical adjustment.

6 48. *Technical Amendment*. Adjustments to a plan or document that complement existing
7 resources and strategies. Considered less than substantive in nature.

8 49. *Timeliness*. An action completed within a prescribed time period specified by relevant
9 law, regulation, or other order.

10 50. *Variance*. A deviation from land use and development regulations.

11 51. *Legal Sufficiency Review*. A formal analysis conducted by a legal expert to determine if
12 material subject to review comply with existing laws, constitutional principles, and legal
13 precedents, ensuring it is legally sound and enforceable.

14
15 **Rule 1.0 Organization**

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

1 B. Alternate Members. If one Regular member of the Board of Appeals is absent, has a conflict
2 of interest, or is otherwise unable to participate in a hearing, an Alternate member shall be
3 selected from the existing pool of appointed Alternate Members to temporarily serve in the
4 Regular member's absence. An Alternate member of the Board of Appeals shall be a
5 registered voter and resident of the County and shall be appointed by the County Council
6 from a county-wide list of applicants as an At-Large member. Whenever possible, the
7 Alternate member shall be of the same political affiliation as the absent Regular member.
8 The Alternate member shall serve a term as defined by legislation. Given the scope and
9 complexity of the Board's subject, the Council shall consider County residents with prior
10 Howard County Board of Appeals experience during the Alternate member selection process.

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

- 18 1) At the request of the Chairperson, an Alternate member shall be selected from an
19 existing pool of those currently serving a term as an appointed Alternate member and
20 shall attend and fully participate in specific hearings or meetings. If all five Regular
21 members are present, the Alternate member shall not attend or be permitted to
22 participate in hearings, work sessions, or other public meetings before the Board

1 except for required training and education events. At no time shall more than five
2 Board members participate as the Board of Appeals.

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

7 3) All docketed case hearings require a full Board of five members to participate. An
8 Alternate member shall temporarily fill the position of one absent Regular Board
9 member. If more than one Regular member is absent, the Chairperson shall postpone
10 the meeting.

11 4) Board members who participate in a case during the initial hearing date shall be the
12 same members to hear and decide the matter through final disposition.

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

19 E. Chairperson responsibilities.

20 1) Conduct full, fair, and impartial hearings and meetings;

21 2) Schedule hearings and meetings;

22 3) Take action to avoid unnecessary delay in the disposition of the proceedings and
23 maintain order;

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- 1 4) Administer oaths and affirmations;
 - 2 5) Issue subpoenas for witnesses and the production of evidence upon the Board's
 - 3 motion or the motion of a party;
 - 4 6) Rule upon offers of proof and admit relevant and material evidence;
 - 5 7) Limit unduly repetitious testimony and reasonably limit the time for presentations;
 - 6 8) Rule on scheduling matters, including continuances and postponements;
 - 7 9) Direct parties to submit legal memoranda, proposed findings of fact, and proposed
 - 8 conclusions of law;
 - 9 10) Issue such orders as are necessary to procure procedural simplicity and administrative
 - 10 fairness and to eliminate unjustifiable expense and delay; and
 - 11 11) Conduct hearings in a manner suited to ascertain the facts and safeguard the rights of
 - 12 the parties to a hearing.

14 **Rule 2.0 Administrative Operations**

15 A. Hours of Operation. The Board of Appeals administrative offices shall be open to the public
16 by appointment from at least 8:30 a.m. to 4:30 p.m., Monday through Friday of each week
17 except:

- 18 1) On days designated under County regulation for the observance of legal holidays by
- 19 County employees or;
- 20 2) On days when the office is closed due to emergency, inclement weather, or other good
- 21 cause by order of the Clerk of the Board of Appeals.

22 B. Board of Appeals Clerk; Roles and Responsibilities. The County Council Administrator
23 shall have the following roles and responsibilities:

1) Be the Clerk of the Board of Appeals and the temporary official custodian of records for the duration of matters docketed with the Board of Appeals.

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

C. Board of Appeals Administrator; Roles and Responsibilities. The Board of Appeals Administrator shall report to the Board of Appeals Clerk and shall:

- 1) Be the official custodian for Board members' training and compliance records;
- 2) Ensure all hearings and meetings of the Board are audio and video recorded and live streamed when applicable;
- 3) Draft and maintain the minutes of Board meetings;
- 4) Accept petitions, motions, and correspondence to the Board;
- 5) Have lead administrative responsibility for providing public notice, including meeting agenda development, as required for all hearings and meetings;
- 6) Prepare a draft agenda for the Chairperson's approval as soon as practicable before public posting;
- 7) Maintain the docket in each case;
- 8) Docket petitions received following these rules and ensure only the proper forms are utilized and contain the information prescribed by the Board of Appeals;

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- 1 9) Record the actions of the Board, and draft meeting minutes for review and approval
2 by the Board;
- 3 10) Coordinate responses to motions as directed by the Chairperson and prepare Board
4 orders for the Chairperson's signature;
- 5 11) At the direction of the Chairperson, conduct and record roll call votes;
- 6 12) Create and produce agenda items and other Board documents, making such articles
7 available to Board members no later than 1 week before a scheduled Board session,
8 whenever practicable;
- 9 13) Receive and disseminate draft written hearing decisions and orders from the County
10 Solicitor for Board member review, approval, and public posting;
- 11 14) Maintain an accurate Board member roster, including email and phone number
12 contact information. No Board members' personal contact information shall be
13 publicly posted;
- 14 15) Prepare and submit a monthly Board member attendance report to the Council
15 Administrator and the Chairperson by the 10th day of each month. The report shall
16 list each member's absences, virtual attendance, and in-person attendance during
17 scheduled sessions for the preceding month;
- 18 16) Post all hearing and meeting-related documents online for public consumption on the
19 Board of Appeals website as soon as possible following receipt as prescribed by these
20 Rules.

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- 1 D. Board of Appeals Administrative Assistants. The Board of Appeals Clerk may assign
2 administrative assistants who shall report to the Board Administrator and perform
3 administrative duties as assigned by the Board through the Administrator.
- 4 E. Legal Advisor. The County Solicitor shall be the legal advisor and draftsman for the Board
5 of Appeals. The Board's Legal Advisor shall report to the Board of Appeals and shall:
- 6 1) Attend all meetings of the Board unless excused by the Chairperson;
 - 7 2) *Identify relevant legal issues.* Proactively monitor legal landscapes and identify potential
8 legal risks that could affect the Board's operation;
 - 9 3) *Provide clear explanations.* Explain complex legal concepts in a way that is
10 understandable to Board members without a comprehensive legal background;
 - 11 4) *Offer legal advice.* Advise the Board on appropriate legal courses of action based on their
12 decision-making needs;
 - 13 5) *Report on compliance status.* Keep the Board updated on the organization's compliance
14 with relevant laws and regulations;
 - 15 6) *Present legal options.* Present different legal options and potential consequences of each
16 option to the Board for consideration.
 - 17 7) Assist any individual Board member(s) desiring to publish an independent, concurrent, or
18 minority opinion. Any opinion(s) shall be incorporated as part of the Board's final
19 decision and order.
 - 20 8) Obtain the Board's guidance prior to and while representing the Board before any court
21 of law. Provide the Board with regular legal updates on any matters adjudicated by the
22 Board and subsequently appealed to a court of law. Provide the Board with any

1 documents submitted by a party during proceedings in a court of law during a case in
2 which the Board is named as a party.

3 9) Provide Board of Appeals members with a memorandum of law for each docketed matter
4 no later than 5 days before the scheduled initial hearing date.

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

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

11
12 **Rule 3.0 Petition Process**

13 A. Form and Contents of Petitions. The Board of Appeals shall prescribe the form and contents
14 of petitions to be used by the Board of Appeals and the Hearing Examiner. and shall be the
15 only petition forms used Each correctly filed petition shall receive a unique docketing
16 number formatted as required by these Rules. The only approved petition form(s) to be used
17 by an Appellant can be found online on the Board of Appeals website at
18 <https://cc.howardcountymd.gov/zoning-land-use/board-appeals> or in the Board's Rules of
19 Procedure Appendix. No other form shall be accepted.

20 B. Accuracy. The Petitioner shall ensure the accuracy and completeness of the information
21 required in the petition before submission. A completed petition shall be filed in person with
22 the Board Administrator or online when available. Absent prior written authorization from

1 the Chairperson, all forms or other documents related to a docketed matter shall be submitted
2 for the Board's consideration in the same manner as the original petition.

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

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

8 E. Amendments to a Petition.

9 1) Amendments to a docketed petition shall be made only during a public hearing.

10 2) The Board may continue, suspend, or postpone a hearing in response to a proposed
11 amendment.

12 3) The Board may order that an amended petition be remanded if the Board determines
13 further technical staff review or other guidance is needed.

14 4) A majority vote shall decide any Board action based on petition amendments.

15 5) At no time shall the Department of Planning and Zoning recommend approval or denial
16 of a petition.

17 F. Payment of Fees. At the time of filing, the Petitioner shall pay the required fees per the
18 current schedule of fees adopted by resolution of the County Council.

19 G. Refund of Fees. If the Board of Appeals reverses the decision of an Administrative Agency
20 after an appeal hearing, then the Board shall order the Director of Finance to refund all
21 administrative hearing and filing fees upon request by the Petitioner.

1) A request for fees to be refunded may be made at any time; however, the request must be submitted no later than 7 days after the conclusion of the Board's deliberation. A request may be submitted verbally during a public hearing or in writing as detailed in these Rules.

2) No request shall be considered if received following the issuance of the Board's final written decision and order.

H. Scheduling. When correctly submitted, each appeal petition will be docketed by the Board Administrator and posted on the online public calendar for the Board of Appeals. The Board Administrator shall notify the Chairperson of any newly docketed case within 2 business days following receipt of a completed petition by the Administrator. The Board Administrator shall provide all related case materials to the Chairperson so the anticipated complexity of the matter may be assessed for scheduling purposes.

1) The Chairperson will schedule the matter within 2 business days of notification and direct the Board Administrator to prepare a scheduling order for the Chairperson's signature and issuance.

2) Appeals shall be heard in order of their submission. However, the Board may rearrange the sequence of cases for efficiency as necessary.

3) The Board Administrator shall serve each party with a scheduling order within 2 business days of the order being signed by the Chairperson. The Administrator may perfect the service of any Board order via email.

1 4) Each scheduling order shall state the date, time, and location that a named party must
2 appear before the Board. Whenever practical, the initial scheduling order shall be issued
3 at least 37 days before the initial hearing date.

4 5) All materials related to a docketed case shall be digitally uploaded with a time stamp to
5 the Board of Appeals public website by the Administrator the scheduling order is issued.

6
7 **Rule 4.0. Public Notice**

8 A. Advertising.

9 1) The Board Administrator shall post a hearing notice on the Board of Appeals website and
10 the Board's Notice Board in the George Howard Building. The hearing notice shall include
11 the same information as the notice posted on the property by the Petitioner.

12 2) For variances in residential districts, the notice shall be posted at least 15 consecutive days
13 before the initial hearing.

14 3) For all other petitions, the notice shall be posted for at least 30 consecutive days before the
15 scheduled initial hearing.

16 4) For 60 days following the enactment of these rules by the County Council, the Board
17 Administrator shall provide weekly notice in at least two newspapers of general circulation
18 in Howard County. The newspaper advertisement shall inform readers that all public
19 notices for Board of Appeals matters can be found online at the Board of Appeals website.
20 No further newspaper advertising shall be required by any party following the 60-day
21 period.

1 B. Signage Posting.

2 1) Except in administrative appeals from a notice of violation of county laws or regulations,
3 the property involved shall be posted with the time, date, and place of the initial hearing.

4 The sign shall include the website addresses for the Department of Planning and Zoning
5 and the Board of Appeals.

6 a) For variances in residential districts, the property shall be posted for at least 15 days
7 consecutively immediately before the scheduled initial hearing date.

8 b) For all other petitions, the property shall be posted for at least 30 days consecutively
9 immediately before the scheduled initial hearing date.

10 c) If a weather-related event, vandalism, or other unexpected disruption prevents the
11 continuous display of the posting, then the Petitioner must immediately notify the
12 Board of Appeals and repost the property as soon as practical.

13 d) In all cases, the Petitioner shall remove posting signage within 15 days following the
14 conclusion of the hearing.

15 C. Signage Posters. The Department of Planning and Zoning shall determine the number of
16 posters required and their location.

17 1) The Petitioner shall bear the expense of posting.

18 2) The sign posters shall be erected by the Petitioner perpendicular to the road which serves
19 as the mailing address of the subject property.

20 3) The Department of Planning and Zoning shall create the required posters with written
21 instructions for placement within 2 days of the matter being docketed by the Board
22 Administrator.

1 4) Signs and instructions for placement shall be picked up by the Petitioner, by appointment,
2 from the Board of Appeals Administrative offices.

3 D. Affidavit of Posting. The Board of Appeals shall prescribe the form and contents of the
4 Affidavit of Posting to be used by the Board of Appeals.

5 1) At the time of the initial hearing, the Appellant shall sign the required affidavit stating that
6 the sign was posted as required. The affidavit shall be entered into the official record as a
7 preliminary matter on the initial hearing day.

8 2) The Appellant shall provide a printed photo of each sign installed as directed, and the
9 image(s) shall be attached to the affidavit.

10 3) The Petitioner shall provide the Board Administrator with two copies of the required
11 affidavit with original signature(s).

12 4) The required Affidavit of Posting can be accessed online at the Board of Appeals website
13 at <https://cc.howardcountymd.gov/zoning-land-use/board-appeals> or in the Board of
14 Appeals Rules Appendix.

15 E. Posting for Other Administrative Appeals heard De Novo. If a Petitioner cannot post a property
16 because the Petitioner does not own the property, the Petitioner shall send a copy of the petition
17 and written notification of the place, time, and date of the hearing to the property owner.

18 1) The Petitioner shall file an Affidavit of Written Notification with the Board Administrator.

19 2) At the time of the initial hearing, the affidavit shall be entered into the official record as a
20 preliminary matter.

1 3) The required Affidavit of Written Notification can be accessed online at the Board of
2 Appeals website at <https://cc.howardcountymd.gov/zoning-land-use/board-appeals> or in
3 the Board of Appeals Rules Appendix.

4 F. Posting for Clarification or Revocation of a Conditional Use When the Department of
5 Planning and Zoning is the Petitioner. The Department of Planning and Zoning shall take the
6 following actions.

7 1) Send written notification of the place, time, and date of the initial hearing to the adjoining
8 and confronting property owners and;

9 2) Post the property with signs as required.

10 3) At the time of the initial hearing, the Director of the Department of Planning and Zoning
11 shall sign the required Affidavit of Posting as required and at the time of the initial
12 hearing, the affidavit shall be entered into the official record as a preliminary matter.

13 4) The Director of the Department of Planning and Zoning shall file an Affidavit of Written
14 Notification with the Board Administrator and at the time of the initial hearing, the
15 affidavit shall be entered into the official record as a preliminary matter.

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

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

20 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 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 A. 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.

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

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

12 B. 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.

14 C. Open to the Public. The public is allowed to attend and observe any open session of the Board
15 of Appeals or Hearing Examiner. Except when authorized by law or when the presiding official
16 expressly invites public testimony, questions, comments, or other forms of public participation,
17 no member of the public may participate.

18 D. Agenda. A meeting agenda shall be made available to the public as soon as the meeting date
19 and time have been established, the topics of the meeting are known, and the document has
20 been approved for publication by the Chairperson. In all cases, meeting agendas shall be made
21 available at least 24 hours before a Board meeting.

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- 1 E. Accommodation. Upon written request of a party, witness, or representative who cannot hear,
2 speak, or understand the spoken or written English language, the Board shall provide a
3 qualified interpreter during any proceeding in which the party, witness, or representative is
4 participating. An interpreter shall take an oath or affirmation that the interpreter will accurately
5 interpret the proceedings. If a party, witness, or representative requests other accommodation,
6 the Board shall provide reasonable accommodation as required by law.
- 7 F. Disruptive Conduct. A person attending an open public meeting may not engage in any
8 conduct, including visual demonstrations such as the waving of placards, signs, or banners,
9 that disrupt the session or interfere with the right of members of the public to attend and
10 observe the session. The presiding official may clear the room of disruptive individuals or
11 recess the meeting or hearing while order is restored.
- 12 G. Recording, Photographing, and Broadcasting of Open Session. A member of the public,
13 including any representative of the news media, may record discussions at an open meeting if
14 the recording device does not disturb people observing or participating in the session. The
15 presiding officer may restrict the movement of a person using a recording device if such
16 restriction is necessary to maintain the orderly conduct of the session.
- 17 H. Recording Not Part of Record. A recording of an open public session made by a member of
18 the public, or any transcript derived from such a recording, shall not be deemed a part of the
19 record of any proceedings.
- 20 I. Open Hearings. Evidence shall be presented to the Board of Appeals only in hearings open to
21 the public. No Board of Appeals member or their staff shall communicate with anyone other
22 than the Board's legal advisor, administrative staff, or a Board member regarding the merits of
23 a case before issuing the final written decision and order.

1 J. Ex Parte Prohibited. All communication between interested parties and the Board of Appeals
2 regarding any specific aspect of a docketed matter must be in writing and submitted as a motion
3 to the Board Administrator. If a response is required, it will be provided in writing.

4 K. Place and Time of Hearings and Meetings. The Board of Appeals hearings and meetings shall
5 be held in the George Howard Building, Ellicott City, Maryland, unless the Chairperson
6 schedules otherwise. The Board of Appeals meets up to once a week.

7 1) Generally, meetings alternate between daytime sessions (up to 8 hours) and evening
8 sessions (up to 4 hours).

9 2) Quarterly meetings, when needed, are dedicated to Board members' continuing education
10 (1-1.5 hours) and may be part of an evening, day, or stand-alone session.

11 3) When needed, work sessions may be scheduled to address administrative matters unrelated
12 to a particular case.

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

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

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

20 3) The Appellant, Petitioner, Respondent and any supporting witness(es) who wish to testify
21 in a docketed matter must adhere to these Rules before being called to testify during a
22 hearing.

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

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

5 M. Continuances. Hearings that are continued at the conclusion of a session shall have the day
6 and time of any subsequent session announced by the Presiding official immediately before
7 the hearing is recessed unless a continuation date was previously noticed. It is unnecessary to
8 repost a property following the completion of an initial session.

9 N. Postponements and Dismissals.

10 1) All requests for postponement must be filed as a motion detailing compelling circumstances
11 for a delay and must include necessary supporting documentation.

12 2) Motions shall be addressed to the Chairperson and received by the Board Administrator as
13 soon as the need for postponement is known or anticipated. Absolutely no oral requests
14 will be allowed or considered.

15 3) No requests for postponement of a hearing shall be granted absent compelling
16 circumstances. The following are examples of compelling circumstances that may be
17 considered.

18 a) Hearing Date Conflict: The first case set takes precedence.

19 b) Death or Serious Illness. Serious illness of, or death in the family of, a party, counsel,
20 or necessary witness.

21 c) Conflicting Vacation Schedule. Vacations scheduled before the hearing date was set.

1 d) Hearing Carryover. A party or counsel becoming involved in a carryover matter in
2 another jurisdiction.

3 e) Hearings that fall on a religious or cultural holiday/celebration day.

4 4) All postponement motions shall be filed as soon as possible but no later than 5 days
5 following the issuance of the Board's scheduling order, absent prior written permission
6 from the Chairperson.

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

9 6) Failure by a named party to appear as ordered may result in the immediate disposition of a
10 matter by a majority vote of the Board.

11 7) If a postponement is granted for an initial hearing date, the Petitioner shall repost the
12 property with the new hearing date and time. The party whose motion to postpone was
13 granted shall bear signage posting expenses associated with reposting.

14 8) Upon a party's third request for postponement, the Board may dismiss the petition by a
15 majority vote.

16 9) The Board shall dismiss a petition where it lacks jurisdiction to proceed.

17 10) A case may be transferred to the inactive docket through a motion and order for 180 days.

18 If a named party does not request the case be returned to the active docket before the 180-
19 day expiration, the Board may dismiss the matter without further notice. A motion to place
20 a matter on the inactive docket shall be a postponement request.

21 O. Correspondence. Written correspondence submitted to the Board without the required written
22 certification shall immediately be rejected and returned by the Board Administrator. The

1 correspondence shall not become part of the record, and the Board shall not consider the
2 communication.

3 P. *Pending Cases in Court.* The Board shall conduct a limited public hearing for any docketed
4 case where a motion to stay has been submitted alleging that the same matter is pending in a
5 court of law. The sole purpose of the evidentiary hearing shall be to determine if the docketed
6 petition involves substantially the same issues as a case already filed and pending in a court of
7 law. The burden shall be upon the movant to demonstrate by substantial probative evidence
8 that the matter in court and before the Board involves the same disputed issues.

9 1) If the Board determines that the two cases involve substantially the same issues, no further
10 hearings shall be conducted, and the Board Administrator shall change the case status to
11 "Pending" until an interested party provides written notification to the Board Administrator
12 that the court of law has issued a final decision. Upon receiving such notification, the matter
13 will be moved to the Board's "Active" case calendar and scheduled for a hearing at the
14 earliest feasible date.

15 2) If a named party fails to notify the Board within 45 days after the court's final decision
16 issuance, the Board may, by its initiative or motion of another, dismiss the docketed matter
17 without further notice.

18
19 **Rule 6.0. Cases**

20 The Board of Appeals adjudicates cases falling into two main categories. The second of the
21 two categories is further divided into two distinct subcategories, each defining the applicable

1 scope of review. The following terms shall have the specified meanings when used to identify
2 the status of a particular case:

3 a) *Received*: A Petition for Appeal has been submitted and officially docketed by the
4 Administrator.

5 b) *Active*: A matter currently under consideration by the Board.

6 c) *Pending*: A matter in which the public hearing has concluded and is awaiting a
7 written final decision and order.

8 d) *Closed*: A matter for which a final written decision and order has been issued to all
9 parties.

10 e) *Inactive*: Proceedings are on hold for up to 180 days, as agreed upon by the parties
11 through a mutual motion and granted order. During the 180 days, the matter is held in
12 abeyance while the parties pursue a settlement or other resolution. Either party has the
13 right to reactivate the case, which will be managed following these Rules.

14 Alternatively referred to as the unscheduled docket.

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

17 1) Cases decided by a Hearing Examiner may be further appealed to the Board of Appeals
18 in accordance with these rules.

19 2) A final decision and order of the Board of Appeals may be appealed to a court of law in
20 accordance with these rules.

21 B. Timeliness. An individual wishing to appeal any final order, decision, requirement, or
22 interpretation made by an administrative official in the enforcement of any matter must file

1 an appeal petition within 30 days of the date of that administrative decision unless the law
2 provides a different period or method for appeal.

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

12 D. Appeals of an Administrative Agency Decision. These cases involve contested matters
13 resulting from any final order, decision, requirement, or interpretation made by an
14 administrative official to enforce any regulated matter. The cases are further categorized into
15 two subcategories. Regardless of the subcategory, the standard for review is based on
16 whether the administrative agency decision was erroneous, arbitrary, capricious, or contrary
17 to law. The distinction between subcategories depends on whether a quasi-judicial hearing
18 was held, involving sworn testimony and the admission of evidence, as well as if an official
19 record was created during the administrative agency's decision-making process.

20 1) De Novo Appeals of an Administrative Agency Decision. This category includes subject
21 matters involving certain decisions by the Department of Planning and Zoning in
22 response to alternate compliance requests and Planning Board decisions related to
23 development plans.

1 a) During a hearing before the Board, no consideration is given to any prior rulings,
2 findings of fact, or conclusions of law. The Board's hearing is based on the original
3 Administrative Agency's action.

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

6 2) *On the Record Appeals of Administrative Agency Decisions.* This category includes
7 decisions by the Administrative Agencies following a quasi-judicial public hearing.

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

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

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

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

18 1) *Virtual Participation.* Any Board member requesting to participate virtually must
19 request permission in writing from the Chairperson. Permission shall only be granted
20 in case of compelling circumstances as defined by these Rules, such as illness or
21 family emergencies that prevent the Board member from attending in person.

22 2) *Absence.* Any Board member unable to attend a scheduled hearing or meeting must
23 notify the Chairperson and Board Administrator in writing as soon as the member

1 becomes aware of their anticipated absence. The Chairperson shall immediately
2 request an Alternate member participate from the pool of Alternate appointed
3 members as defined by these rules.

4 3) The Board Administrator shall provide written notification to the Chairperson and
5 Board Clerk any time a Regular or Alternate member has accumulated 3 absences
6 within 12 months. The Chairperson shall notify the County Council and request
7 action, including potential removal and replacement of the delinquent Board member.

8 F. Voting. Only Board members who participated during all portions of a hearing or work
9 session shall be eligible to vote on a matter or decide a docketed case. A final decision shall
10 have the concurrence of a majority of the Board.

11
12 **Rule 7.0 Ethical Service**

13 A. A member of the Board shall withdraw from participating in any matter or proceeding in
14 which personal bias or other factors may render the member unable to remain impartial or in
15 which an appearance of impropriety may reasonably be inferred from the facts.

16 B. To avoid even the appearance of impropriety, a member must disqualify themselves as to those
17 matters and questions in which a member has a direct personal or pecuniary interest in the
18 outcome, which differs from the interest of other citizens.

19 C. Any member who believes they may have a conflict of interest or other potential
20 disqualifying concern shall request a written opinion from the Howard County Ethics
21 Commission before participating and shall notify the Board of their request. Board of
22 Appeals members may voluntarily recuse themselves from a matter without seeking an
23 advisory opinion from the Ethics Commission.

-
- 1 D. Members acknowledge that by participating in a hearing or work session, they have
2 evaluated both the subject matter, and the parties involved, and they are not aware of any
3 conflicts of interest or reasons that would prevent them from fully participating.
- 4 E. The Chairperson or Board Clerk shall immediately notify the County Council, in writing, if
5 any member fails to comply fully with the Howard County Ethics Law. Such written
6 notifications shall request that the member be removed from the Board and shall be in
7 addition to any other requirements of the law.
- 8 F. Due to the complexity of the quasi-judicial process and the Board's authority to limit
9 individual property rights, Board members shall not participate as members of any other
10 municipal county board, commission, or task force while serving as a member of the Board
11 of Appeals.
- 12 G. Except for Board membership, Board of Appeals members shall not be employed by the
13 Howard County government nor serve as an elected official to public office in Howard
14 County.
- 15 H. Each member of the Board of Appeals shall file a completed financial disclosure statement
16 and Employee Ethics Acknowledgement form no later than April 30th of each year. The
17 Board Administrator shall retain the completed forms as law or policy requires.
- 18 I. No later than June of each year, the Board Administrator shall issue a written report to the
19 Board containing each member's filing status compliance. Any member who fails to submit
20 the required disclosure shall be disqualified from participating in meetings or hearings until
21 they become compliant.

22

1 **Rule 8.0 Record of Hearings**

2 A. Official Record. The Board of Appeals shall maintain an official record of its proceedings in
3 each case as required by law and policy. This record shall include all testimony and exhibits
4 and a recording of the proceedings.

5 B. Transcription of Testimony. All requests for transcriptions of testimony shall be made in
6 writing to the Board Administrator. The requesting party shall pay the cost for transcription
7 before the service is performed. The transcriber shall certify the accuracy of any transcript.
8

9 **Rule 9.0 Evidence**

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

17 B. Testimony. Expert testimony may be admitted, in the form of an opinion or otherwise, if the
18 testimony will assist the Board in understanding the evidence or determining a fact in issue.
19 The Board may only qualify a witness as an expert after evaluating the following criteria.

- 20 1) Whether the witness is qualified as an expert by knowledge, skill, experience, training, or
21 education; and
22 2) The appropriateness of the expert testimony on the particular subject; and
23 3) Whether a sufficient factual basis exists to support the expert testimony.

1 C. Admissibility. Any evidence which would be admissible under the rules of evidence
2 applicable in judicial proceedings in the State of Maryland shall be admissible in hearings
3 before the Board of Appeals.

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

6 2) The Board may exclude immaterial or unduly repetitious testimony or evidence.

7 3) The Board may limit the number of witnesses when testimony is cumulative.

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

13
14 **Rule 10. Admission of Evidence**

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

19 1) The moving party shall remain seated, absent the Presiding official's permission to the
20 contrary, and provide ten hard copies of the item to the Board Administrator.

21 2) Parties are encouraged to provide an electronic copy of the item to opposing parties and
22 the Administrator before the hearing.

1 3) The Administrator shall provide one copy to the opposing party and the Board's legal
2 advisor, and one copy to each member. The Administrator shall retain one copy, which
3 shall serve as the only official copy of the item in the record. The item shall be marked
4 for identification only, and the Administrator shall announce how it will be labeled.

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

9 5) Once the witness has finished answering, the moving party shall seek to have the item
10 entered as evidence.

11 6) After considering any opposition to the exhibit, the Presiding official shall rule on the
12 request to move the item into evidence. If the Presiding official denies the request, the
13 item shall remain in the record for identification purposes only; however, it shall not be
14 admitted as evidence.

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

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

1 D. Hearsay Evidence. Witness testimony offered as hearsay may be accepted for either
2 supplementing or explaining any direct evidence, provided it is not offered to prove the truth
3 of the matter asserted. Hearsay evidence shall not, in and of itself, be considered sufficient to
4 support a finding or decision.

5
6 **Rule 11. Motions**

7 A. Form. A party may request the Board to address a matter by filing a written request as a
8 motion to the Board.

9 B. Certification. All motions shall include certification that a copy was provided to all persons
10 known to have an interest in the case, including but not limited to the Petitioner, the property
11 owner, the Administrative Agency, and any person entitled to written notification under these
12 Rules. The certification shall state, "Any person interested in responding to the motion shall
13 file a written response with the Board within 5 days of the date that the motion was filed."
14 The Board may rule on the pending motion any time 10 business days after the original filing
15 date.

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

20
21 **Rule 12. Appearances Before the Board of Appeals**

22 A. Parties. An individual or any other legal entity may become a party to proceedings before
23 the Board by registering online. Parties must provide their name and address or the name and

1 address of the entity they represent before the Appellant's case in chief concludes unless
2 directed otherwise by these Rules.

3 B. 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 person
6 employing dilatory tactics shall be removed from participating further in the case.

7 C. 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 D. 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 E. Spokesperson. When a group of individuals appears in opposition to a petition, the Presiding
14 official may request them to elect a spokesperson. The spokesperson shall have the power to
15 cross-examine witnesses, call witnesses, introduce evidence on behalf of the group, object to
16 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 F. 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 Supreme Court of Maryland. An attorney,
21 acting under an agreement with a client for legal representation, shall file a written notice of
22 appearance with the Board before appearing on a party's behalf at a hearing. The notice of

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

3 G. Withdrawal of appearance. An attorney may withdraw their appearance by providing the
4 Board with written notice.

6 **Rule 13. Subpoenas**

7 A. Issuance. The Board may issue a subpoena on its own initiative and may grant or deny a
8 request by parties to a proceeding.

9 B. 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.

12 1) A motion for subpoena template form can be found on the Board of Appeals website at
13 <https://cc.howardcountymd.gov/zoning-land-use/board-appeals> or in the appendix of
14 these Rules.

15 2) A motion for subpoena shall include the following information:

16 a) The name and address of the witness whose testimony is to be compelled.

17 b) A clear and concise proffer of the content and relevance of the expected
18 testimony.

19 c) A list of all documents or items sought to be produced.

20 d) Regulatory citations in support of the request

21 C. Issuance and service of a subpoena.

22 1) The Chairperson shall consider and decide on a motion for subpoena within 5 days of
23 receipt.

1 2) If granted, the subpoena shall be signed by the Chairperson and promptly delivered to the
2 person requesting the subpoena, who shall be responsible for arranging service for the
3 subpoena at least 7 days before the date of the hearing.

4 3) The person serving the subpoena shall certify through an Affidavit of Service that the
5 subpoena was served personally or by certified mail. An Affidavit of Service template
6 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 4) The Chairperson shall also rule on any motions to quash or modify a subpoena.

10 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
12 will hear and decide the motion for reconsideration during a public hearing.

13 D. 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 1) Fails or refuses to comply with a subpoena for appearance.

16 2) Appears but fails or refuses to testify under oath; or

17 3) Refuses to comply with a directive of the Presiding official 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 E. Enforceability. By a majority vote, the Board of Appeals may direct their legal advisor to
22 request a court of competent jurisdiction to enforce the subpoena, compelling the attendance

1 of witnesses and requiring the production of books, papers, documents, and other materials
2 relevant to the case as detailed in the subpoena.

3
4 **Rule 14. Proceedings**

5 A. Overview. The Board of Appeals is a quasi-judicial body, meaning the process is like that of
6 a court. Proceedings before the Board shall be governed by the Maryland Annotated Code,
7 Howard County Code, and established case law. The Board is empowered to determine a
8 person's or entity's rights under certain County ordinances. Matters under the jurisdiction of
9 the Board of Appeals include but are not limited to hearings on appeals and reviews of any
10 final order, requirement, decision, or determination made by an administrative agency or
11 body and hearings on applications for permits or variances. Matters concerning such rights
12 may only be determined by the Board after conducting a quasi-judicial proceeding.

13 B. Questioning. Questioning should be concise and focus solely on the criteria for consideration
14 as defined by code. In the case of cross-examination, questions must relate only to statements
15 made by the witness during direct examination. No statements or speeches should precede
16 questions. All questions must be interrogative and must not be argumentative or suggest
17 anything about the personality or motives of the witness. At the discretion of the Presiding
18 official, questions or cross-examination shall be put in written form and asked by the Board's
19 legal advisor.

20 C. Questioning an Appellant witness. Typically, the opposition or a spokesperson cross-
21 examines, but any individual wishing to question the Petitioner's witness may do so with
22 leave from the Presiding official. The Presiding official may grant this leave after
23 recognizing the individual who wishes to question the Petitioner's witness and after the

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

3
4 **Rule 15. De Novo Hearing Procedures**

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

8 B. Order of Presentation.

9 1) The County Solicitor introduces reports and official documents pertaining to the case.

10 a) Opening statements by opposing parties.

11 b) Petitioner's presentation.

12 c) Direct examination of witnesses.

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

15 e) Re-direct examination of Petitioner's witness.

16 f) Re-cross-examination of Petitioner's witnesses.

17 g) Opposition's presentation.

18 h) Direct examination of opposition's witnesses.

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

21 j) Re-direct examination of opposition's witnesses.

22 k) Re-cross examination of opposition's witnesses.

1 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 3) Petitioner's summation.

4 4) Opposition's summation.

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

8 D. *The Board's Action.* At the end of the presentation, the Board of Appeals will deliberate
9 during an 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 1) The Board may not consider evidence from either side after the hearing is concluded.

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

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

18 A. *De Novo Appeals.* The procedures outlined in the De Novo Hearing Procedures section of
19 these Rules apply to administrative appeals heard De Novo, except for the burden of proof.

20 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
22 Agency to show that the Appellant violated the laws or regulations in question by a
23 preponderance of the evidence.

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

4
5 B. Appeals On the Record.

6 1) *Record transcript.* Within 30 days of filing an appeal on the record from an action of an
7 Administrative Agency, the Appellant shall file with the Board Administrator one digital
8 copy and one hardcopy of the transcript record of the hearing being appealed and shall
9 serve one digital copy of the transcript record with the Administrative Agency. The
10 Board Administrator shall provide each Board member with a copy of the transcript
11 within 2 days following receipt.

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

15 3) *Filing Requirements.* The Appellant shall file one digital copy and one hard copy of the
16 memorandum with the Board Administrator and shall serve one digital copy to the
17 Administrative Agency. The Board Administrator shall provide each Board member with
18 a copy of the memorandum within 2 days following receipt. The memorandum shall
19 include:

- 20 a) Points of law;
21 b) References to legal authority;
22 c) Page citations of portions of the transcript record; and
23 d) Exhibits by number.

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

- 9 a) Points of law;
- 10 b) References to legal authority;
- 11 c) Page citations to particular portions of the record transcript; and
- 12 d) Exhibits by number.

13 5) *Sanctions for late filing of memorandum.*

- 14 a) If the Appellant fails to file the required memorandum in a timely manner, the Board
15 may dismiss the appeal.
- 16 b) If the Administrative Agency fails to file the required reply memorandum in a timely
17 manner, the Board may rule on its own initiative, for summary judgment in favor of
18 the Appellant without further notice.

19 6) *Oral arguments.* The Board may entertain oral arguments based on the record. The
20 Board may limit the length of oral arguments.

21 7) *Burden of proof.* The burden of proof shall be on the Appellant to show that the action
22 taken by the Administrative Agency was clearly erroneous, arbitrary, capricious, or
23 contrary to law.

1 8) *The Board's Action.* The Board may dismiss, affirm, or modify the Agency's action.

2 Alternatively, the Board may remand the action to the Agency for further proceedings or
3 an alternate disposition.

4
5 **Rule 17. Decision and Order; Process and Issuance**

6 A. *Decision and Order.* All docketed matters heard by the Board of Appeals shall receive
7 disposition through the issuance of a final decision and order.

8 1) The written decision and order of the Board shall be signed by the voting Board members
9 and the Board's legal advisor who prepared the document.

10 2) The Board's final decision and order shall include findings of fact and conclusions of law.

11 3) The decision and order shall be made a part of the record of the proceedings, filed with
12 the Department of Planning and Zoning as part of the permanent record, and maintained
13 as part of the official records of the County.

14 B. *Dissenting or Concurring Opinion.* Any member(s) of the Board of Appeals who
15 participated in a hearing may file a dissenting or concurring opinion. Such dissenting or
16 concurring opinion(s) shall be made a part of the record of proceedings and included as part
17 of the Board's final decision and order.

18 C. *Decision and order timeline.*

19 1) The Board shall deliberate and decide on each case no later than 30 days after all parties
20 have rested their case.

21 2) A final written decision and order shall be issued no later than 60 days after the Board
22 has deliberated and decided a case.

-
- 1 3) The Board's legal advisor shall provide the Board Administrator with a preliminary draft
2 version of the written decision and order, including findings of facts and conclusions of
3 law determined by the Board, no later than 30 days after the Board has rendered its verbal
4 decision during a public hearing.
- 5 4) The Board Administer shall provide each Board member with an electronic copy of the
6 preliminary draft decision and order within 1 day.
- 7 5) The Board shall direct their legal advisor to make amendments to the draft decision and
8 order no later than 5 days after the preliminary draft has been transmitted to the Board
9 Administrator.
- 10 6) Board member-directed amendments may include any concurrent or dissenting opinion.
- 11 7) The Board's legal advisor shall provide a finalized written decision and order to the
12 Board Administrator no later than 45 days after the Board has rendered its oral decision
13 during a public hearing.
- 14 8) The Board Administrator shall provide each Board member with an electronic copy of
15 the unsigned final decision and order within 1 day.
- 16 9) The Board Administrator shall arrange to have the document signed by all Board
17 members no later than 5 days following receipt from the Board's legal advisor.
- 18 10) *Extension.* The Board, at the request of the County Solicitor, and with good and
19 sufficient reason, may extend the time for issuance of a written decision and order to no
20 later than 75 days after the Board issues its oral decision.
- 21 a) An extension of time shall be considered only during a public meeting.

1 b) The Board's legal advisor must notify named parties involved in a matter being
2 considered for an extension of time at least 5 days before the public meeting where
3 the extension will be discussed.

4 c) At the Presiding official's discretion, parties shall have the opportunity to briefly be
5 heard during a public hearing before the Board's deliberation and decision of an
6 extension request.

7 11) *Publication.* The Board Administrator shall post the final decisions and orders:

8 a) Electronically mail final decisions and orders to each named party or their
9 representatives within 3 days of receipt from the County Solicitor.

10 b) On the Board of Appeals website for public consumption within 3 days of receipt
11 from the County Solicitor.

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

15 1) The Board of Appeals shall be a party to all appeals and shall be represented by the
16 Office of Law at any such hearing.

17 2) Once an appeal is filed in circuit court, the Board no longer retains jurisdiction and may
18 not suspend its decision and order or consider a motion for reconsideration.

19
20 **Rule 18. Revisory Power of the Board**

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

1) The Board may revise its decision and order if the party petitioning for reconsideration establishes a mistake of fact or error of law.

2) The motion for reconsideration may include a request to suspend the decision and order.

B. Process. A party of record may file a written response to a motion for reconsideration within 5 days following the filing of a motion for reconsideration.

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

2) 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 within the timelines specified within these Rules.

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

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

Rule 19. Severability

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

Rule 20. Required Training

A. Within 6 months of appointment, each Board member, including Alternate members, shall complete the following:

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- 1) Complete the "Planning Commission, Planning Board and Board of Appeals Education Course" as defined in the Annotated Code of Maryland and offered through the Maryland Department of Planning.
 - 2) Review materials from publicly offered planning courses designed by the Howard County Department of Planning and Zoning that educate residents on how the planning and land development process works and complete in-person or virtual training if such courses are offered.

Rule 21. Required Education

This section outlines the regulations governing the quasi-judicial process, land use law, and public planning education, collectively referred to as the Education Program. The primary objective of the Education Program is to enhance Board of Appeals members' understanding of their roles and responsibilities. Board members are strongly encouraged to seek additional formal learning opportunities beyond the foundational curriculum of the Education Program.

A. *Definitions.* The following words shall have the following meaning within this section.

- 1) *Approved course.* A course, approved by the Board of Appeals Clerk, offered by a person, institution, organization, or entity that satisfies the mandatory curriculum of the Education Program and for which members shall receive certification.
- 2) *Certificate of Completion.* Written documentation provided to members serving as evidence of satisfactory completion of an approved course.
- 3) *Course Provider.* An institution, organization, entity, or individual qualified by training and experience to offer an approved course.

1 4) *Authorized Instructor*. Licensed professional planners or attorneys experienced in land
2 use matters licensed to practice in Maryland and who provide direct student instruction.

3 5) *Exemptions*. Members who provide documented proof of completing a more extensive
4 course of study in quasi-judicial process, land use law, and planning than what is required
5 by the Education Program shall be exempt from completing that requirement.

6 Nonetheless, all Board of Appeals members must meet the mandated training standards
7 set forth in these regulations.

8 B. *Request for Continuing Education*. Any Board member wishing to attend a continuing
9 education offering shall submit a written request for approval to the Clerk through the Board
10 Administrator. Request forms can be found online on the BOA website or in the appendix of
11 these rules.

12 1) Requests compliant with this section shall be deemed approved pending budgetary
13 restrictions.

14 2) Written requests to attend training shall be submitted at least 30 days before the
15 educational offering whenever possible and shall contain the following information.

16 a) The title of the course and the name of the hosting organization.

17 b) Course length, including the total number of sessions, length of session(s), and the
18 frequency with which they will be offered.

19 c) A description of the course content, preferably a syllabus. Any practical work
20 requirement to be completed by the Board members shall be identified in the request.

21 d) A list of any text or materials to be used during the course, including whether the text
22 or materials shall be mandatory or recommended.

23 e) If available, the instructors' names, credentials, and relevant professional experience.

1 f) A list of which core educational content area is to be covered and how much time will
2 be dedicated to each of the five domains outlined in this section.

3 C. Curriculum. This section sets forth the basic requirements for the Education Program
4 curriculum. Course providers may offer combined or separate courses and classes for new or
5 experienced members. However, the course must cover each topic listed in this section to be
6 considered for approval and applicable to the mandatory education requirement. The
7 Educational Program shall have five key segments totaling 5 hours of continuing education
8 annually and an additional 3 hours biannually, as listed below.

9 1) *Quasi-Judicial Procedures*. (1.5 hours bi-annually) This domain provides an overview of
10 the Board's responsibilities in conducting and participating in hearings. It covers key
11 elements of the hearing procedure, including quorum requirements, the roles of the
12 applicant, opponents, public, Board members (including the chair), and expert witnesses.
13 Participants will also learn about the management of evidence, public questioning and
14 testimony, Board inquiries, the burden of proof, motions and resolutions, and
15 qualifications for participation in a hearing.

16 2) *Decision Making*. (1.5 hours bi-annually) Determining findings of fact and conclusions of
17 law, and standards for review.

18 3) *General Plan*. (2 hours annually) Understanding the General Plan of Howard County and
19 related components, including but not limited to Howard County Complete Streets, the
20 Howard County Landscaping Manual, and Adequate Public Facilities (APFO).
21 Correlating the relationship of the general and comprehensive zoning plans to the
22 ordinances and regulations.

1 4) *Applications & Petitions.* (1.5 hours annually) The purpose of the development
2 application review process segment of the Education Program is to provide an overview
3 of development applications that come before the Board, their administration, review, and
4 hearing process. Mandatory topics include how to read, analyze, and review a land
5 development plan. In addition to the technical aspects of reading a plan, the analysis shall
6 explore site visits and the plan's relationship to local design standards and regulations,
7 including site plan, subdivision, zoning, and health regulations. The analysis shall also
8 explore the relationship between County and State regulations. The overview of the plan
9 review shall include the role of reports from County professionals, subject matter experts,
10 the applicants, and the public.

11 5) *Law.* (1.5 hours annually) Review of Maryland Land Use Act, County Land Use Law,
12 Local Redevelopment and Housing Law, or other relevant land use and planning laws
13 and rules.

14
15 **Rule 22. Electronic Submissions**

16 A. *Definitions.* The following words shall have the following meanings in the context of this
17 section.

18 1) *Filer.* A person who utilizes electronic filing, such as email or other digital medium, to
19 make a submission to the Board of Appeals.

20 2) *Envelope:* A single email or electronic folder in which submissions are filed. An envelope
21 should contain all submissions related to one case that are filed simultaneously. For
22 example, a new case envelope might include the following five submissions in one
23 envelope: a completed petition, exhibits to the petition, certification of service, and a

1 preliminary motion. Do not use separate envelopes for submissions filed simultaneously
2 in the same case.

3 3) *Submission*: A pdf or jpeg file contained within an envelope or individually.

4 4) *Filing Code*. An approved caption of a submission. Only the Board Administrator shall
5 use filling codes for Orders. Appendix C of these rules shows an approved list of filing
6 codes.

7 B. *E-Filing Process*. When automated filing is unavailable in a docketed case, a party may file
8 an eligible submission by email. Submissions shall be directed to
9 BOA@howardcountycouncil.com. The email's subject line shall be formatted as "Docket
10 Number_Filing_Code_Party Last Name". An example of an acceptable email subject line for
11 an electronic submission is BA-99-000_Motion Postponement_Smith.

12 1) The Administrator shall reject any email submission that is not properly formatted as
13 required by these rules. A rejected submission must be resubmitted for consideration by
14 the Board and does not extend a deadline for submission.

15 2) An electronic submission received without any attachment would qualify as a rejected
16 submission under the provisions of paragraph #1 above. The Administrator would reject
17 the submission for noncompliance with the Rules of Procedure and enter a no-document
18 included notation in the online record.

19 C. *Electronically file (e-file) a submission*. An individual may not e-file a submission on behalf
20 of another unless the filer is an attorney representing a party to a matter.

21 1) All e-file submissions shall be capable of being converted into electronic format and that,
22 in electronic format, may be converted into a legible paper document.

1 2) A party wishing to submit a file that exceeds the permitted size capacity shall contact the
2 Board Administrator for further direction and access to a cloud-based mass storage
3 repository.

4 D. Exemption from e-file. The following types of email submissions shall not be e-filed without
5 prior authorization of the Board Administrator.

6 1) An original petition for appeal.

7 2) A single document of more than 50 pages.

8 3) Oversized documents, such as blueprints, maps, and plats.

9 4) Items that cannot be filed electronically because of their physical nature.

10 E. Submission Review by Board Administrator. As soon as practicable, the Board Administrator
11 shall review each document submission for compliance with the Rules of Procedure. If the
12 Administrator determines that the submission is non-compliant, the Administrator shall reject
13 the submission and promptly notify the filer.

14 F. Submission Rejection. The Administrator shall note on the online docket that a submission
15 was received but was rejected for noncompliance with the Rules of Procedure.

16 1) No further description of the nature of the rejected submission shall be entered.

17 2) A corrected and refiled submission shall not reference the filing of the rejected
18 submission.

19 3) A filer whose submission was denied by the Administrator may seek a review of the
20 action by filing a motion for procedural review by the Board.

21 G. Board of Appeals Public Website and Calendar. All contested case matters before the Board
22 of Appeals shall be published by the Administrator on the Board of Appeals website
23 <https://cc.howardcountymd.gov> as soon as practicable upon docketing.

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- 1 1) Each matter within the individual case calendar shall be categorized in the following
2 chronological format under the "Case Materials" section. The title of the information
3 headings shall read "File Date, Document Name, Comment." Each document name shall
4 be hyperlinked to the physical document and viewable online.
- 5 2) The Board Administrator shall maintain the online currency for each docketed matter.
- 6 3) The Board Administrator shall enter any relevant information in the comment section if a
7 notation is required for a case.

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