# RULES OF PROCEDURE

# of the

# ZONING BOARD HEARING EXAMINER

**(As Adopted November 10, 2026)**

## ARTICLE I - AUTHORITY AND PURPOSE

**A. Authority**. These Rules of Procedure are adopted pursuant to Section16.203A of the Howard County Code, which authorizes the Hearing Examiner to hold evidentiary hearings on behalf of the Howard County Zoning Board.

**B. Purpose**. The purpose of this title is to set out the rules and procedures by which hearings will be conducted by a Hearing Examiner on behalf of the Zoning Board.

**C. Organization**.

1. **Hearing Examiner.** The Hearing Examiner is appointed by the County Council and is authorized to hear cases in accordance with Sec. 16.203A of the Howard County Code.

2. **Board Administrator**. A Board Administrator to the Zoning Board shall be appointed by the Zoning Board. The Board Administrator shall be the custodian of the records of proceedings during the pendency of the case before the Zoning Board and Hearing Examiner, shall accept petitions, motions, and correspondence to the Zoning Board and Hearing Examiner, and shall maintain the calendar and docket in each case. The Board Administrator shall also perform administrative duties as assigned or shall delegate performance of administrative duties to administrative assistants hired by the County Council for such purpose.

3. **Legal Advisor**. The County Council may appoint a Legal Advisor to the Zoning Board who shall be the legal advisor and the draftsperson for the Zoning Board and Hearing Examiner. The Legal Advisor to the Zoning Board shall be a member in good standing of the Bar of the Supreme Court of Maryland for a minimum of 5 (five) years and at the time of appointment shall have knowledge of, and been actively engaged in the practice of, administrative and zoning and planning law, practice, and procedure. The Legal Advisor to the Zoning Board may be removed from office by a vote of two-thirds of the members of the County Council. If the position of Legal Advisor to the Zoning Board is vacant, the County Solicitor shall be the attorney and the draftsperson for the Zoning Board and Hearing Examiner. With the approval of the Chair of the Zoning Board, the County Solicitor may delegate any or all of these duties, from time to time, to an attorney on their staff.

4. **Zoning Counsel**. The Zoning Board may employ a Zoning Counsel to perform duties as provided by Title 16, Subtitle 10, Section 16.1000 of the Howard County Code. The Zoning Counsel, in accordance with Section 602(a) of the Howard County Charter, is employed or contracted by the County Council as provided in their operating expense program submitted to the County Executive for the ensuing fiscal year. The appointment of the Zoning Counsel, similar to the appointment of the Hearing Examiner for the Zoning Board, is handled administratively by the County Council.

   Upon approval of a contract or subsequent contract renewal, at the beginning of the term, the Zoning Counsel shall be a party for purposes of these Rules of Procedure in all cases in which they have the authority to participate. The role of the Zoning Counsel does not extend into advising the Zoning Board on legal or procedural matters. However, nothing herein shall be construed to grant the right of the Zoning Counsel to appeal a Zoning Board decision.

## ARTICLE II - MEETINGS, HEARINGS AND SESSIONS

### A. Scheduling.

1. **Zoning Board Administrative Meeting.**

   a. Within five (5) business days after the Planning Board issues its report for a Zoning Board petition, the Board Administrator shall provide each member of the Zoning Board a copy of the report. Within five (5) business days after the Board Administrator provides the members with the report, if three (3) members of the Zoning Board give notice to the Board Administrator of a desire to hear a case, the Chair shall call the Zoning Board into an administrative meeting, at which a majority of the Zoning Board shall vote to hear and decide the case, refer the case to the Hearing Examiner to conduct the evidentiary hearing and issue its report to the Zoning Board, or declare the petition incomplete, in which event another administrative meeting shall be scheduled to review any additions to the file to be submitted by the petitioner. If an administrative meeting is not requested by at least three (3) Zoning Board members within the five (5) business day period, the petition will automatically be referred to the Hearing Examiner in accordance with Howard County Code, §16.203A(a)(1).

   b. The Board Administrator shall notify the Zoning Board Chair of the administrative decision of the Board. In conjunction with the Chair, the Board Administrator shall notify the Zoning Board members, the Hearing Examiner, the petitioner(s), and the Zoning Counsel, as applicable, which entity, Zoning Board or Hearing Examiner, will hear the case.

2. **Hearing Examiner Hearing**. If the evidentiary hearing will be conducted by the Hearing Examiner, the Board Administrator shall forward the petition and

supporting documents to the Hearing Examiner. The Hearing Examiner shall notify the Board Administrator and the Board Administrator, in turn, shall notify the Department of Planning and Zoning of time, date and place of the Hearing Examiner. The hearing of the Hearing Examiner shall be conducted pursuant to these Rules of Procedure adopted by the Zoning Board for the conduct of Zoning Board Hearing Examiner hearings.

**B. Place & Time of Hearings**. Hearings of the Hearing Examiner shall be held in the Banneker Room, George Howard Building, Ellicott City, Maryland, except as may be otherwise scheduled by the Hearing Examiner. Hearing Examiner hearings shall begin at 6:30 P.M. unless otherwise scheduled by the Hearing Examiner. Evidentiary hearings of the Hearing Examiner shall be held on a weeknight that does not conflict with Howard County Government closures and holidays, as defined by Howard County Code §22.900, or any day on which Rosh Hashanah, Yom Kippur, Eid Ul Fitr or Eid Ul Adha is observed.

**C. Official Record of Hearings**. The Board Administrator shall maintain an official record of the proceedings of the Hearing Examiner in each case, which shall include all testimony and exhibits. Thirty days after the Decision and Order has been issued, and if no appeal has been filed, the official record of proceedings shall be forwarded to the Department of Planning and Zoning, the official custodian of the record. This official record is a public record which is open for inspection to the public.

**D. Transcription of Testimony**. It shall not be necessary to transcribe the testimony unless requested for court review, or when requested by any party. A request for a transcription shall be submitted in writing to the Board Administrator. The party ordering the record shall pay, in advance, the estimated cost of transcribing the record, and adjustments in payment shall be made upon completion of the transcript. In the case of an appeal filed with the Circuit Court, if an extension of time is required to complete the transcript of the record, it shall be incumbent upon the party to request the Circuit Court for the extension.

**E. Public Attendance**. The general public and representatives of the news media are encouraged and invited to attend all Hearing Examiner hearings and reasonable seating facilities shall be provided.

**F. Maintenance of Order**. All persons attending Hearing Examiner hearings are expected to maintain order and decorum and to refrain from disturbing the orderly process of the hearings. The Hearing Examiner shall maintain order and recess the hearings if any uncontrollable disorder occurs.

**G. Open Hearings**. Evidence shall be presented to the Hearing Examiner in hearings open to the public. The Hearing Examiner shall not receive any evidence, argument, or other matter in closed session. The Hearing Examiner shall not engage in ex parte communications of any kind with Zoning Board members or anyone other than the Legal Advisor

to the Zoning Board or staff regarding the case from the time the Zoning Board is notified by the Director of the Department of Planning and Zoning of filing of the petition to 30 days after the time the Decision and Order is final.

**H.** **Open Worksessions**. The public is invited to attend the worksessions held by the Hearing Examiner on a petition in accordance with the open meetings law, however, no additional evidence or testimony will be accepted.

**I.** **Closed Worksessions**. The Hearing Examiner may meet in closed session as permitted by the Maryland Open Meetings Act.

## ARTICLE III - GENERAL RULES REGARDING PIECEMEAL (NON-COMPREHENSIVE) MAP AMENDMENT PETITIONS, PETITIONS FOR APPROVAL OF A DEVELOPMENT PLAN, AND PETITIONS TO APPEAL DISTRICT MAP LINE ADMINISTRATIVE ADJUSTMENTS.

**A.** **Petitions**.

1. **Who may file a Petition**. Any person owning an interest in the property affected may petition the Zoning Board for approval of a development plan, and a person owning an interest in the property affected, the Director of the Department of Planning and Zoning or members of the Zoning Board may petition the Zoning Board for piecemeal map amendment. The form and number of copies of the petition shall be as prescribed by law or by the Zoning Board's Rules of Procedure. Appeals of district map line administrative adjustment decisions may be taken by any person, officer, department, board or bureau of the County aggrieved by the decision of the Department of Planning and Zoning and who participated in the proceedings conducted by the Department of Planning and Zoning.

    a. **Petition Forms.** The form of the petition shall be as prescribed by the Chair of the Zoning Board after consultation with the Department of Planning and Zoning and the Office of Law. The petitioner may obtain petition forms from the Department of Planning and Zoning.

    b. **Statements and Drawings.** The petition shall be filed with the Director, Department of Planning and Zoning of Howard County, George Howard Building, Ellicott City, Maryland, and shall include such statements and drawings as are described in the Zoning Board petition form.

    c. **Site Plan Documentation**. If a petition for an amendment to the zoning district boundaries includes site plan documentation, the provisions as outlined in Section 100.G.2. of the Howard County

Zoning Regulations shall be followed.

d. **Complete Information.** The petition and the required number of copies to be submitted shall be as specified by the Department of Planning and Zoning. At the request of the petitioner, the Department of Planning and Zoning shall explain the requirements for submitting a petition and provide information available within the department, but it shall be the petitioner's responsibility to ensure that the petition is adequately completed.

e. **Exhibits.** Exhibits and plats admitted into evidence shall not be permanently mounted but must be easily removable in order to be folded to a maximum size of 9 inches by 14 inches for placement in the official file.

f. **Preliminary Review.** When a petition is filed, it shall be given a case number immediately. Except for appeals of district map line administrative adjustments, the Department of Planning and Zoning shall make a preliminary review of the petition and may require corrections or additional material before scheduling a Planning Board meeting date.

2. **Petitioner's Amendment of Petition**. Requests to amend a petition shall be in writing, signed by the petitioner, and may be submitted only by the petitioner or their authorized representative. If the Zoning Board, under Section 2.402.A.1 of the Zoning Board Rules of Procedure, has voted to forward the petition to the Hearing Examiner, amendment requests will be submitted to the Hearing Examiner. The Hearing Examiner may remand requests to amend an administrative adjustment petition to the Department of Planning and Zoning for its decision if it deems the amendment to be substantial. The amendment of petitions shall be subject to the following restrictions:

a. **Amendments.** Amendment requests must be submitted to the Hearing Examiner prior to the close of the hearings on the petition.

b. **Substantive Amendments.** Amendments to zoning map petitions which involve new locations or more intensive zoning classifications shall not be considered. In those instances, the amended petition shall be filed as a new petition with the Department of Planning and Zoning, reviewed and re-advertised in accordance with applicable law and these Rules of Procedure. Amendments to Preliminary Development Plan petitions which substantially redesign or reconfigure the plan elements shall be remanded to the Planning Board for its recommendation. If the Zoning Board, under Section 2.402.A.1 of the

Zoning Board Rules of Procedure, has voted to forward the petition to the Hearing Examiner, subsequent to the actions taken in this paragraph the petition will return to the Hearing Examiner and will not be resubmitted to the Zoning Board.

c. **Additional Review.** The Hearing Examiner reserves the right to refer amended petitions to County agencies for additional review and reports.

3. **Withdrawal of Petition**. Any petition may be withdrawn. All withdrawals shall be in writing, signed by the petitioner and may be submitted only by the petitioner or their authorized representative. No petition may be withdrawn after the commencement of the Zoning Board worksession to decide the petition. Withdrawals shall be submitted to the Department of Planning and Zoning prior to or during the Planning Board meeting on the petition and shall be submitted to the Board Administrator after the Planning Board meeting, provided, however, that withdrawals of appeals to district map line administrative adjustments shall only be submitted to the Board Administrator.

4. **Resubmission of Petition**. A petition which is the same or substantially the same as one that has been denied in whole or in part by the Zoning Board, shall not be resubmitted for a period of 24 months from the date of the last hearing by the Zoning Board or Hearing Examiner. A petition which is the same or substantially the same as one that has been withdrawn after the taking of evidence at a public hearing of the Zoning Board or Hearing Examiner, shall not be resubmitted for a period of 24 months from the date of the public hearing at which the petitioner withdrew the petition.

**B. Fees**

1. **Payment of Fees**. Fees shall be paid by the petitioner at the time the petition is submitted in accordance with the current schedule of fees adopted by resolution of the County Council, except that fees for any additional hearing must be paid within 10 days of the final hearing. If a map petition is granted, the fee for revisions to the Zoning Map shall be paid within 30 days of the receipt of the Decision and Order. All checks shall be made payable to "Director of Finance, Howard County" and submitted to the Zoning Board Administrative Assistant for processing.

2. **Refund or Waiver of Fees**.

a. **Individual Petitions**. The Hearing Examiner may by order refund or waive in whole or in part the filing fee in any case in which the petitioner shows to the satisfaction of the Hearing Examiner that the

Petitioner will be subject to an extraordinary hardship due to the payment of the fee. The Hearing Examiner recognizes the incurred county cost for processing petitions and may refund part of the filing fee for withdrawn petitions.

b. **Governmental Petitions**. In the event that the petitioner is an official, board, or agency of the Howard County government, all fees shall be waived provided that the petition was filed in the performance of the governmental duties of the official or agency. Fees shall be waived for any additional hearing(s) scheduled for the consideration of substantial amendment(s) to a petition when such amendment(s) is proposed by an officer or agency of the Howard County Government and approved for additional hearing(s) by the Hearing Examiner.

## C. Notice to the Public

1. **Advertising**. Within five (5) business days following the decision whether or not the Zoning Board will hold an administrative meeting, the Board Administrator will provide the date and time of either the administrative meeting or the Hearing Examiner hearing to the Petitioner. The petitioner shall advertise the subject of the petition and the time and place of the meeting or hearing at least 30 days prior to such meeting or hearing. The petitioner shall bear the cost of publishing the advertisement, which shall be published once in at least two newspapers of general circulation in Howard County. Before the petitioner submits the advertisement to the newspapers, the proposed advertising shall be submitted to the Board Administrator in a format deemed adequate by the Chair of the Zoning Board. The Board Administrator shall approve the proposed advertisement and notify the petitioner of said approval prior to insertion in any newspaper.

   If the Zoning Board holds an administrative meeting, the date of the evidentiary hearing is required to be announced at Zoning Board administrative meetings, if not included in the initial advertising, and shall not be less than ten (10) business days after the initial administrative meeting. No additional advertising is required.

2. **Posting of Property**. The petitioner shall post and maintain posting of the subject property for at least 30 days immediately prior to the administrative meeting. The poster shall indicate the proposed amendment, the location, time

and date of the administrative meeting. The Department of Planning and Zoning shall approve the quantity and the location of posters to ensure that local residents may reasonably be expected to see one of the posters. Posters shall remain in place for at least 15 days following the close of the hearing(s) to allow time for the Hearing Examiner to visit the site. The petitioner shall remove the posters within 15 days of notification of the decision in the case. The posters shall be posted in accordance with the Affidavit of Posting and Posting Procedures provided by the Department of Planning and Zoning. If the petitioner in a district map line adjustment case cannot post the property because the petitioner does not own the property, then the petitioner shall send a copy of the notice of appeal and written notification of the place, time and date of the hearing to the property owner and the adjoining property owners and shall file an affidavit of written notification with the Board Administrator.

3. **Filing Certificates of Advertising and Affidavit of Posting**. The petitioner shall file certificates of advertising and the Affidavit of Posting and Posting Procedures with the Board Administrator prior to the Zoning Board administrative meeting.

4. **Notice to Adjoining Property Owners.** For all petitions except for appeals of district map line adjustments, at the petitioner's expense, a written notice shall be mailed in accordance with the requirements of the Zoning Enabling Act of Howard County (Title 16, Subtitle 2 of the Howard County Code).

5. **Responsibility for Ensuring Compliance with Advertising and Posting Requirements**. The petitioner is responsible for ensuring compliance with the advertising and posting requirements of this subtitle. If any question arises regarding compliance with the advertising and posting requirements, the burden is on the petitioner to prove compliance. If the Hearing Examiner determines that the petitioner has made a good faith effort to comply with the advertising and posting requirements, the Hearing Examiner may give the petitioner a reasonable opportunity to correct the non-compliance. If the Hearing Examiner determines that the petitioner has not made a good faith effort to comply with the advertising and posting requirements, the Hearing Examiner may recommend the Zoning Board dismiss or postpone the petition.

**D. Conduct of Hearings - Hearing Examiner in Zoning Board Cases.**

1. **Docket**. At the beginning of the hearing, the Hearing Examiner shall call the docket. At this time, all preliminary matters, requests for continuance, and other motions may be heard.

2. **Presentation**. The petitioner, protestants, and Zoning Counsel shall have the

opportunity to state their cases by presenting testimony, exhibits, and other relevant evidence. Except for the introduction of official documents and reports as provided in Subsection D.3. below, the Hearing Examiner shall not accept written testimony into the record unless it is presented by a witness appearing in person subject to cross-examination. Upon agreement of all parties, however, the Hearing Examiner may accept into the record written testimony.

3. **Order of Presentation and Burden of Proof.** The order of presentation in all cases before the Hearing Examiner shall be as provided below. For purposes of order of presentation and burden of proof, in appeals from administrative adjustment decisions, the petitioner before the Department of Planning and Zoning shall be the petitioner before the Hearing Examiner. The burden of proof in all cases is one of a preponderance of the evidence and is on the petitioner to show by competent, material and substantial evidence, that they are entitled to the relief requested and that the request meets all prescribed standards and requirements. In piecemeal map amendment petition cases, the Hearing Examiner shall limit the hearing to evidence relevant to the applicable criteria which would justify the requested rezoning. If the Hearing Examiner finds that the evidence is insufficient to permit approval of the piecemeal amendment according to the applicable criteria, the Hearing Examiner shall recommend the Zoning Board deny the request by written decision. If the Hearing Examiner finds the evidence may be sufficient to permit approval of the piecemeal map amendment petition according to the applicable criteria, it shall resume the hearing in order to receive evidence on the appropriateness of granting the piecemeal map amendment, on the criteria applicable to any documented site plan petition filed with the request, or both.

    a. Petitioner's Presentation:
        (1) Petitioner’s opening statement.
        (2) Direct examination of the petitioner's witnesses.
        (3) Cross-examination of the petitioner's witnesses by Zoning Counsel, protestants, and the Hearing Examiner.
        (4) Re-direct examination of petitioner's witnesses.
        (5) Re-cross examination of petitioner's witnesses.

    b. Supporters’ Presentation:
        (1) Supporters’ Opening statement.
        (2) Direct examination of supporters’ witnesses.
        (3) Cross-examination of supporters’ witnesses by Zoning Counsel, protestants, and the Hearing Examiner.
        (4) Re-direct examination of supporters’ witnesses.
        (5) Re-cross examination of supporters’ witnesses.

(6) Supporting persons of record testimony.

c. Undeclared persons of record testimony.

d. Zoning Counsel's Presentation:
   (1) Zoning Counsel's opening statement.
   (2) Direct examination of Zoning Counsel's witnesses.
   (3) Cross-examination of Zoning Counsel's witnesses by the petitioner, parties in support, and the Hearing Examiner.

e. Protestant's Presentations:
   (1) Protestant's opening statements.
   (2) Direct examination of protestant's witnesses.
   (3) Cross-examination of protestant's witnesses by the petitioner, parties in support, and the Hearing Examiner.
   (4) Re-direct examination of protestant's witnesses.
   (5) Re-cross examination of protestant's witnesses.
   (6) Protestant persons of record testimony.

f. Conduct of cross examinations. Questions of witnesses on cross-examination by petitioner, Zoning Counsel, protestants, and parties shall be brief, shall pertain only to statements made by the witness on direct examination, and shall be interrogatory in nature and not argumentative. Questions shall not be preceded by statements nor shall they contain allusions to personality or motives. If the Hearing Examiner shall rule the question out of order or objectionable, it shall be the duty of the person asking it to rephrase the question. If the question is not rephrased so that it is not objectionable, the Hearing Examiner shall rule the question objectionable and instruct the witness not to answer the question. In the discretion of the Hearing Examiner, questions of the petitioner or petitioner's witnesses on cross-examination shall be put to the witness by the Zoning Counsel. Persons of record will not be eligible to conduct cross examinations.

g. Rebuttal by Petitioner and parties in support. The petitioner may present evidence to rebut any evidence introduced by the Zoning Counsel or any protestant.

h. Surrebuttal by Zoning Counsel and protestants.

i. Summation by petitioner and parties in support.

j. Summation by Zoning Counsel and protestants.

4. **Oath**. All persons testifying in a case shall give their name, email address, and address and shall be required to take the following oath given by the Hearing Examiner: "I solemnly swear or affirm under the penalties of perjury that the responses given and statements made will be the truth, the whole truth, and nothing but the truth."

5. **Motions.**

a. **Preliminary Motions.** A party may request the Hearing Examiner to address a preliminary matter at least thirty (30) days prior to the date of the initial hearing by filing the request as a motion to the Hearing Examiner and certifying that a copy was provided to all parties identified by the Hearing Examiner, including but not limited to the petitioner, the property owner, the administrative agency, or any person entitled to written notification under Section 2.403 of the Zoning Board Rules of Procedure. The certification must state "any person interested in responding to this motion must file a written response with the Hearing Examiner within fifteen days of the date that the motion was filed." The Hearing Examiner may rule on the motion at any time after a response is filed or fifteen days after the filing of the motion.

b. **Other Motions**. Any request for the Hearing Examiner to take action shall be made by written motion. The person filing the written motion shall and certify that a copy was provided to all person or record, including but not limited to the petitioner, the property owner, the administrative agency, or any person entitled to written notification under the Zoning Board Rules of Procedure. The certification must state "any person interested in responding to this motion must file a written response with the Hearing Examiner within fifteen days of the date that the motion was filed." The Hearing Examiner may suspend the proceedings and may rule on the motion at any time after a response is filed or fifteen days after the filing of the motion.

6. **Pre-hearing Conferences**. Upon the request of a party at least fifteen days prior to the initial hearing or at the Hearing Examiner's own initiative, the Hearing Examiner may hold a pre-hearing conference for the clarification or simplification of issues.

7. **Subpoenas**.

a. **Issuance.** Any party requesting the Hearing Examiner to issue a subpoena must submit a written request to the Board Administrator. The request must contain the name and address of the person to be subpoenaed, a brief proffer as to the content and relevance of the party's expected testimony, and a list of all documents to be brought to the hearing by the subpoenaed person. The Hearing Examiner shall have the right to deny any request the Hearing Examiner deems irrelevant. If the request is granted by the Hearing Examiner, the subpoena will be issued by the Hearing Examiner and the Board Administrator shall provide the signed subpoena to the party requesting the subpoena for service.

b. **Service.** The party requesting the subpoena will be responsible for arranging service of the subpoena prior to the date the person subpoenaed is required to appear. All subpoenas shall be served on the subpoenaed person in the manner provided by the Maryland Rules of Civil Procedure for service in the Circuit Courts of this State. The party serving the subpoena must certify in writing that the subpoena was served personally or by certified mail and such certification shall be provided to the Board Administrator.

c. **Response to Subpoena.** No person shall disobey or fail to answer the subpoena. A response to a subpoena may be the filing of a motion to revoke the subpoena prior to the date the person is requested to appear. A witness may be excused from attendance if they can show that their placement under subpoena was frivolous or oppressive or seeks information not relevant to the proceeding. No subpoena recipient shall be required to produce documents that are protected from production pursuant to a valid claim of privilege. That recipient shall respond to the subpoena by the filing of a motion to revoke the subpoena as to the privileged documents requested, and that motion shall set forth a general description of the documents subject to the privilege. The Hearing Examiner shall rule on motions to revoke a subpoena.

d. **Enforceability.** The Hearing Examiner or the party of record requesting the subpoena may request a court of competent jurisdiction to enforce the subpoena, compelling the attendance of witnesses and requiring the production of books, papers, documents and other materials relevant to the case. A person who violates a court order enforcing a subpoena shall be subject to fine or body attachment as may be ordered by the court enforcing the subpoena.

8. **Questions by the Hearing Examiner**. The Hearing Examiner and the Zoning Board's legal counsel, upon recognition by the Hearing Examiner, may question any witness at any time, but the Hearing Examiner's questions normally will be entertained after direct and cross examination.

9. **Matters of Law**. All matters of law raised by any party during a hearing shall be ruled on by the Hearing Examiner after consultation with any legal counsel attending the Hearing Examiner. The rulings of the Hearing Examiner shall be final, but objections thereto shall be entered in the transcript and made a part of the record of the proceedings.

10. **Legal Advisor**. Legal Advisor to the Zoning Board shall attend all the Hearing Examiner's public hearings, evidentiary hearings, meetings and work sessions and shall be available for advice as requested. If the position of Legal Advisor to the Zoning Board is vacant, the County Solicitor or designee shall be generally available to offer advice to the Hearing Examiner on cases being heard by the Hearing Examiner but shall not be required to attend the Hearing Examiner hearings.

11. **Legal Memoranda**. The Hearing Examiner may receive, by a date certain, written memoranda summarizing the presentations of the petitioner, protestants, Zoning Counsel and parties and analyzing the applicable law upon (1) approval by the Hearing Examiner of a specific request made in open session, or (2) the Hearing Examiner's decision to require said memoranda.

12. **Site Visit**. The Hearing Examiner shall visit the property that is the subject of the hearing prior to the commencement of the hearing and may visit the property again before the close of the record. The Hearing Examiner shall not base any finding of fact upon observations made during a site visit unless it so states its intention and gives all parties an opportunity to comment on such proposed findings of fact.

13. **Continuation of Cases**. Cases which have not been concluded will be continued to a day, time, and location determined by the Hearing Examiner. If such day, time and location is determined before the initial hearing is suspended, no written notification to the petitioner(s), parties, Zoning Counsel or protestant(s) is necessary. If such day, time and location is not determined before the initial hearing is suspended, the Board Administrator shall notify the petitioner(s), parties, Zoning Counsel or protestant(s) of the rescheduled day, time and location via email. It shall not be necessary to re- advertise a continued hearing or re-post the property.

14. **Additional Evidence**. The Hearing Examiner may recess and/or leave the record open in a case to receive additional evidence at a later time if it deems that it is essential in making a proper recommendation. At the time the Hearing Examiner recesses and/or leaves the record open for the receipt of additional evidence, it shall specify how parties may receive copies of the additional evidence, and how much time parties have to respond before the record is closed.

15. **Case taken under Advisement**.

a. Once a case has been fully presented, it shall be taken under advisement for the Hearing Examiner to render its recommendation. Thereafter, no new evidence may be taken into the record except:
   (1) Subject to an approved Motion for Reconsideration wherein good cause was found as to why the evidence could not have been previously presented into the record; or
   (2) The evidence is presented pursuant to a remand of the Hearing Examiner; and
   (3) All parties have been afforded the opportunity to present evidence in rebuttal.

b. Notwithstanding the above subparagraphs (1)-(3), the Hearing Examiner may deny admission of additional evidence upon a finding that its probative value is outweighed by any cumulative effect, undue prejudice, or delay in the proceedings.

16. **Communications Outside of a Hearing**. The Hearing Examiner shall not engage in ex parte communications of any kind with Zoning Board members or anyone other than Legal Advisor to the Zoning Board or staff regarding the case from the time the Zoning Board is notified by the Director of the Department of Planning and Zoning of filing of the petition to 30 days after the time the Decision and Order is final. A party filing written correspondence with the Hearing Examiner shall certify in writing that a copy of the correspondence has been served to all parties to the case or to their representative and such writing shall be provided to the Board Administrator along with the correspondence.

17. **Parties:**

a. A party is the owner, petitioner, appellant, appellee, respondent, or any other group or individual which requests, by writing or testimony, to become a party on or before the date the Hearing Examiner closes the record.

b. Parties have the rights and duties described in these Rules of Procedure and Title 16 of the Howard County Code. Being designated a party as defined in these Rules of Procedure does not determine a person's right to appeal to the courts.

18. **Persons of Record**:

a. A person of record is an individual or group who submits oral or written testimony for consideration in the record but who is not a party.

b. Persons of record do not have the rights and duties afforded to parties in these Rules of Procedure and Title 16 of the Howard County Code. Persons of record will not be required to send copies of their testimony to parties; nor will parties or the Hearing Examiner be required to send testimony, motions, meeting notices, or other required communications to persons of record. Being designated a person of record as defined in these Rules of Procedure does not determine a person's right to appeal to the courts.

c. Persons of record may choose to become a party to the proceeding through the same manner as an individual or a legal entity who has not previously been a party to the case.

**19. Signing Up To Testify.**

a. **Sign Up Form.** The method of sign up for a proceeding shall be as prescribed by the Hearing Examiner after consultation with the Board Administrator and the Office of Law. The method of sign up shall clearly differentiate the rights and duties of parties and persons of record.

b. **Parties and Persons of Record.** Whether or not a party or person of record wishes to testify, an individual or any other legal entity may become a party or person of record to the proceedings before the Hearing Examiner by:

(1) Providing the name, address, email address, and signature of the party or person of record and/or of the legal entity's duly authorized representative on a sign-up sheet provided by the Hearing Examiner; or

(2) Signing up and attending virtually on the designated virtual platform; or

(3) Testifying before the Hearing Examiner and providing it with the name, email address, and address of the party or person of record and/or legal entity; or

(4) Sending a letter to the Hearing Examiner, received before the close of the record in the case, indicating that the individual and/or legal entity is a party or person of record to the matter before the Hearing Examiner and providing the party's or person of record's name, email address, address and signature. Such letters may not be considered for any substantive content and will be received into evidence only for identification of parties to the case. In addition, petitions for or against a zoning matter shall not be used for purposes of conferring party status on those individuals signing the

petition under this provision.

c. **Persons in Support.** All parties or persons of record who are called to testify or desire to testify at a hearing in support of the petition shall sign their own name to the roster in favor of the petition or sign up and attend virtually on the designated virtual platform. If a hearing is continued, only the individuals who have signed a roster or signed up and attended virtually on the designated virtual platform prior to the end of the petitioner's case or are called by the petitioner in rebuttal shall be permitted to testify in support.

d. **Protestants**. All parties or persons of record who are called to testify or desire to testify at a hearing in opposition to the petition shall sign their own name to the roster as a protestant to the petition or sign up and attend virtually on the designated virtual platform. If a hearing is continued, only the individuals who have signed a roster or signed up and attended virtually on the designated virtual platform prior to the end of the protestants' case or are called by the protestants in surrebuttal shall be permitted to testify.

**20. Appearances before the Hearing Examiner**

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

(1) An individual may appear on his or her own behalf.

(2) A member of a partnership or limited liability company may represent the partnership or limited liability company.

(3) An officer or duly appointed representative of a corporation, trust, or association may represent the corporation, trust, or association.

(4) A duly authorized representative or employee of a political subdivision, body, or department may represent the political subdivision, body, or department.

b. **Spokesperson**. When a group of protestants to a petition appear together, the Hearing Examiner may request them to elect a spokesperson who shall have the power to cross-examine witnesses, call witnesses, introduce evidence on behalf of the group, object to the introduction of evidence, make opening and closing statements,

and act in a representative capacity solely on behalf of those individuals electing the spokesperson. Those individuals not electing to be represented by a spokesperson may act on their own behalf.

c. **Representation by Attorney-at-Law**. Any party in a proceeding may be represented by an attorney-at- law admitted to practice law before the Supreme Court of Maryland. Before the hearing begins, the attorney shall give the Hearing Examiner written notification of the names and addresses of individuals they will be representing and his or her own name, address and telephone number.

d. **Representatives of Associations; Number of Members; Geographical Limits.** An individual testifying on behalf of any association shall substantiate that they are authorized to speak for and present the views of that association. The authorization may consist of a duly adopted resolution of the association signed by the president or attested by the secretary. The individual testifying shall state the number of members in the association and its geographic boundaries, if any.

**E.** **Virtual or Hybrid Hearing**. At the discretion of the Hearing Examiner, hearings may be conducted virtually or hybrid (in-person and virtual). All participants should be able to communicate clearly during the proceedings and the participants should readily be able to access and view any exhibits used in the proceeding. At no point during witness testimony shall counsel, a representative, or the parties communicate with the testifying witness without the permission of the Hearing Examiner. All witnesses and representatives shall affirm that they will act in accordance with the Hearing Examiner's Rules of Procedure. The witness affirmation shall include a statement that no one, other than authorized video conference participants, are present in the room. No one may seek to influence or guide the witness's testimony on the merits of the petition during the testimony. However, if the witness experiences technical difficulty during his or her testimony, the proceeding will be stopped to allow counsel and the witness to resolve the issue.

**1.** Parties must prepare themselves and their witnesses for the technical challenges of a virtual proceeding.

a. The petitioner, or its representative, and the protestants, or representatives, shall arrange for all relevant documents to be transmitted to the testifying witnesses in advance of the proceedings.

b. The Board Administrator and staff shall serve as the "host" or "co-host" of the proceeding.

c. The host or co-host shall test the various technical features that the parties will employ, including the platform(s) to be used to view and mark exhibits, and to conduct break-out sessions.

**2.** The proceeding should be conducted according to the parameters set out below. Additionally, the parties will be given a separate means of communication via text message, telephone, or email.

a. **Audio/video.** In order to minimize background noise, participants shall mute themselves and other electronic devices when others are speaking.

b. **Troubleshooting.** In case one of the parties loses connectivity during the proceeding, it should be immediately reported to the rest of the attendees using a designated messaging system. This is especially relevant where there is only an audio connection.

c. **Recording.** All proceedings will be livestreamed and a video recording will be made and archived according to Howard County Council record retention policy. Access to these recordings will be maintained on the Howard County Council's website. The recording is considered part of the record.

d. **Staging and venue.**

(1) To the best extent practicable, at all times the Hearing Examiner and any speaking party shall be visible. Persons of record will not be required to be visible.

(2) When presenting a witness, counsel or the party representative shall ensure that the camera captures the table in front of the witness and the top of the witness's head.

e. **Virtual Attendance.**

(1) Virtual participants to a proceeding shall be limited to those identified as attendees prior to the proceeding. Attendees may be elevated to participant status during the proceeding.

(2) If a party wishes to add an additional attendee not previously invited to a proceeding, the party shall alert the Board Administrator prior to the start of the proceeding.

**3.** Witness examination in the virtual proceeding shall be conducted to the extent possible in the manner prescribed below.

a. **Appearance of the witnesses.**

(1) When providing witness testimony, representatives or counsel and the witness shall identify all individuals present in the

room where the testifying witness is present and shall confirm that the witness is not receiving communications of any sort during the testimony.

(2) The witness shall not use a "virtual background" without approval of the Hearing Examiner.

b. **Use of documents.**

(1) All exhibits and documents used in the course of a witness direct and/or cross-examination shall be made available to the witness.

(2) The witness and/or their representative shall assist with the exhibits and facilitates locating and presenting the documents to the witnesses during the witness' testimony. All participants should be familiar with the functions of the document sharing platform prior to commencement of the proceedings.

c. **O b j e c t i o n s .**

(1) Parties and witnesses are to be mindful during examinations that the other parties may object to questions.

(2) All parties and witnesses shall allow additional time for such objections to be made.

(3) Participants should make every effort not to speak at the same time. If the Hearing Examiner is speaking, participants should stop talking until the Hearing Examiner permits testimony to continue

## ARTICLE IV - REPORT BY HEARING EXAMINER AFTER HEARING EXAMINER HEARING; DECISION AND ORDER OF ZONING BOARD AFTER HEARING EXAMINER HEARING

### A. Report.

1. The Hearing Examiner shall issue a report on each petition heard by the Hearing Examiner.

2. The Hearing Examiner shall issue the report within 60 days after the conclusion of the evidentiary hearing unless the Zoning Board specifies a different time.

3. The report shall include findings of fact, summaries of arguments and respective positions in the case or theory in support of it, and conclusions of law.

4. The report is not an order or final action of the Zoning Board.

5. The report shall be signed by the Hearing Examiner and sent to the Zoning Board Administrator to be distributed to the members of the Zoning Board, each party

to the case, and posted on the Zoning Board's website. The report shall be deemed issued on the date that the report is signed by the Hearing Examiner.

**B. Record.**

1. The record shall include:
    a. All items listed in section 2.121(a) of the County Code;
    b. Maps;
    c. Recordings of the hearings held by the Hearing Examiner;
    d. Presentation by the Department of Planning and Zoning; and
    e. All other materials provided to the Hearing Examiner by the petitioner, the protestants, and government agencies.
    f. Following the close of the record, the Hearing Examiner shall send the record to the Zoning Board Administrator to be distributed to the members of the Zoning Board.

**C. Exceptions.**

1. After a Hearing Examiner issues a report, a party may submit to the Zoning Board exceptions to the report.
2. Exceptions shall be in writing and shall be filed with the Zoning Board within 10 business days after the Hearing Examiner's report is issued. The party filing exceptions shall send the exceptions to the Zoning Board Administrator and all other parties in the case by both email and first-class mail, postage paid. The exceptions shall specify in detail those items to which the party excepts and the reasons why the party excepts.
3. Any party may file a written response to any other party's exceptions within 10 business days of the filing of any exceptions.
4. On the filing of exceptions, the Zoning Board shall schedule an oral argument on the exceptions in a timely manner. The oral argument is limited to those matters to which exceptions have been taken. The time allowed for oral argument on all exceptions shall be thirty (30) minutes for each party. The Zoning Board may choose to take evidence on an exception.

**D. Presentation to the Zoning Board**. The Hearing Examiner shall appear before the Zoning Board and present the report, along with the record, to the Zoning Board. The Hearing Examiner's presentation shall be within the scope of the report. The hearing of exceptions to the report shall follow the Hearing Examiner's presentation.

**E. Actions by the Zoning Board**. Every decision and final order in a piecemeal map amendment or development plan case shall be in writing, signed by a majority of the entire

Zoning Board, attested by the Zoning Board Administrator, and shall be accompanied by findings of fact and conclusions of law and shall be made a part of the record of proceedings. The final order of the Zoning Board denying or granting the petition for a piecemeal map amendment, or approving or disapproving a development plan, shall be filed with the Department of Planning and Zoning, which shall maintain it as part of the official records of the County. The Zoning Board may decide by majority vote to remand the petition to the Hearing Examiner for additional testimony and hearing.

1. **Dissenting or Concurring Opinion**. Any member(s) of the Zoning Board may file dissenting or concurring opinions. Such dissenting or concurring opinions shall be made a part of the record of proceedings and the Decision and Order.

2. **Distribution of Decision and Order.** Upon receipt of the Zoning Board's final Decision and Order in any case, the Board Administrator shall distribute copies to the petitioner or party and/or their agent, to representatives of the news media and to any person requesting a copy in person or in writing. Upon receipt of a Decision and Order which results in a change to the zoning maps, the Department of Planning and Zoning shall amend the official Zoning Maps as applicable. The Department of Planning and Zoning shall also notify the Maryland State Department of Assessments and Taxation of any zoning map change.

3. **Appeal of Decision and Order.** Any person authorized by law may appeal the final Decision and Order to the Circuit Court for Howard County in accordance with the Maryland Rules of Procedure. The person appealing the ruling of the Decision and Order shall immediately request and make payment for the transcript of the record to the Board Administrator (see 2.402.D.).

**F. Time limits on final action by Zoning Board.**

1. A motion for final action in any piecemeal map amendment or development plan petition before the Zoning Board which fails to obtain the required majority shall be set aside, and it or any other motion for final action may be subsequently considered within the following time periods:

    a. In a piecemeal map amendment or development plan case, the Zoning Board shall make its decision finally disposing of the petition within one hundred twenty (120) days after the Hearing Examiner files its report with the Board Administrator, or within one hundred fifty (150) days if exceptions are filed.
    b. The Zoning Board may take final action in any piecemeal map amendment or development plan petition immediately after the Hearing Examiner's report has been filed if all parties and Zoning Counsel waive (in writing) their rights to file exceptions.

## G. Remand.

1. **In general.** Within the time specified for final decision, a majority of Zoning Board may vote to remand any piecemeal map amendment or development plan case heard by the Hearing Examiner back to the Examiner for clarification or for additional testimony. Where additional testimony is taken upon remand, there shall be a new or revised report from the Hearing Examiner.

2. **Request.**

    a. When an exception is filed, any party may file a request for remand. The request shall be submitted (in writing) to the Board Administrator of the Zoning Board not later than sixty (60) days after the Hearing Examiner has filed its decision on the case and at least fourteen (14) days prior to the scheduled hearing before the Zoning Board. The request shall set forth the reasons for the remand. The party making the request shall send, by first class mail and by email, a copy of the request to all parties. A certificate of service shall accompany the submission to the Board Administrator.
    b. The Zoning Board shall schedule argument on the requested remand prior to argument on the merits of the case.
    c. Argument shall be restricted to the reasons for which the remand was requested and the need therefor. Argument shall also be limited to fifteen (15) minutes for each side, unless extended by the Chair of the Zoning Board.
    d. At the conclusion of the argument, the Zoning Board may either: remand the case to the Hearing Examiner, citing the reasons therefor; or deny the requested remand, and either conduct the scheduled exceptions hearing; or direct the Board Administrator to schedule or reschedule the public hearing on the merits of the case and so notify all parties. The denial of a request for remand made pursuant to Subsection (b) of this Section does not prohibit the Zoning Board from subsequently remanding a case pursuant to either Subsection (a) or Subsection (c) of this Section.

3. **Order.**

    a. The Zoning Board's order for a remand shall be in writing. The petition shall be remanded to the Hearing Examiner, and the time for a final decision shall begin to run anew from the date of the refiling of the petition with the Zoning Board.
    b. Once the petition has been remanded, it may be amended. Unless amendments or procedures are limited by the order of the Zoning Board remanding the petition, it shall be treated as a new petition.

c. In no case shall the remand order waive the requirement for a new Technical Staff Report.

**H. Time for final decision.** Whenever the Zoning Board remands a petition, the time limits on final action shall begin to run anew from the date of refiling the petition with Zoning Board.

## ARTICLE V - ADOPTION AND AMENDMENT OF RULES

Any interested person may petition the Zoning Board to adopt, amend or repeal any of the Hearing Examiner Rules of Procedure. The petitioner shall advertise a public hearing on the proposed amendments at least 30 days prior to the hearing date. All interested persons shall have the opportunity to comment on the proposed change(s) at the public hearing. The Zoning Board shall receive comments in writing from the time of introduction of the amendments to no later than two weeks after the conclusion of the last public hearing. The adoption of a proposed amendment shall be by a majority vote of the Zoning Board.

## ARTICLE VI - SEVERABILITY

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