

DRAFT CITY OF ANNAPOLIS BOARD OF APPEALS

RULES OF PROCEDURES

REVISED 9.22.16

These Rules of Procedure are adopted pursuant to Maryland Annotated Code, Land Use Article, Section 4-304, and Section 21.08.040D of Code of the City of Annapolis ("City Code").

Article 1. Powers

- a. The Board may hear and decide all applications, appeals and matters permitted by Maryland Annotated Code, Land Use Article, Section 4-304, and Section 21.08.040D of the City Code, both as may be amended from time to time.

Article 2. Membership

- a. The Board shall consist of five members, plus an alternate member to serve if a Regular Board member is absent or recuses himself or herself, all appointed by the Mayor and confirmed by the City Council.
- b. The term of office of a Board member is 3 years.
- c. A Board member may be re-appointed for additional and consecutive terms.
- d. Board members shall be dedicated to the interest of the City as a whole and shall act in an informed, impartial, and judicious manner.
- e. Board members shall generally be informed about and familiar with concepts of land use, urban planning, architecture, landscape architecture, engineering, construction and zoning law.
- f. No Board member shall allow bias or prejudice to affect his or her ability to exercise fairness and reason in any proceeding before the Board.
- g. No Board member shall represent any applicant, appellant, or member of the general public before the Board.
- h. No former Board member shall represent any applicant, appellant, or member of the general public before the Board for at least one year after the date the Board member's service on the Board has.
- i. A Board Member may represent himself or herself before the Board on any application or appeal that he or she has filed, but may not participate as a Board member.

Article 3. Initial and Subsequent Filing Requirements

- a. Applications and appeals shall contain all information required by the City Code and be made on a form provided by the Department of Planning and Zoning.
- b. The Director of Planning and Zoning shall determine when an application is complete.
- c. Each application and appeal shall be numbered serially and docketed.

- d. No later than 14 days before the date of a public hearing, the applicant or appellant shall file with the Department of Planning and Zoning all documents that the applicant or appellant intends to offer into evidence at the hearing. If the applicant or appellant seeks to offer into evidence at a public hearing any information or documentation that was not submitted timely, the information or documentation shall be admitted if the applicable standard for admission is met and, in the discretion of the Chair, to do so would not cause significant prejudice to any person participating in the public hearing.

Article 4. Agenda

- a. The agenda for each Board meeting shall be prepared by the Department of Planning and Zoning and shall be approved by the Chair prior to public notification.
- b. Applications and appeals shall be placed on the agenda for a public hearing in the order in which they were filed with the Department of Planning and Zoning.
- c. The Chair may revise the agenda before and during each Board meeting in the interests of economy and expediency, unless to do so would cause significant prejudice to the applicant, appellant, or members of the public. In so doing, the Chair may order that a hearing on any application or appeal be placed out of the chronological order of the filing of any application or appeal.
- d. The agenda for each Board meeting shall include:
 1. Roll Call;
 2. Declaration of quorum;
 3. Public hearings on applications and appeals;
 4. New business;
 5. Old business;
 6. Approval of minutes;
 7. Deliberations;
 8. Signing Opinions and Orders.

Article 5. Conduct of Meetings

- a. All meetings of the Board, except those meetings allowed by law to be closed, shall be open to the public.
- b. Three members of the Board shall constitute a quorum for the conduct of business before the Board.
- c. In the absence of both the Chair and the Vice Chair at any proceeding of the Board, the senior Board member in terms of length of service shall act as Chair and shall preside with all the powers of the Chair.

Article 6. Public Hearings on Applications

- a. The Board shall conduct a public hearing on each application submitted to the Department of Planning and Zoning over which the Board has jurisdiction.
- b. The Board shall hold a public hearing at such times and places as the Chair shall designate.
- c. A public hearing shall be recorded under the supervision of the Chair.

- d. The Chair shall regulate the course of a public hearing.
- e. The Chair or the Vice Chair may administer oaths and compel the attendance of witnesses or production of documents by subpoena.
- f. The order of procedure for a public hearing on an application shall be as follows:
 - 1. Report from the Department of Planning and Zoning;
 - 2. Presentation by the applicant;
 - 3. Public testimony by those in support of or in opposition to the application;
 - 4. Rebuttal of public testimony by the applicant;
 - 5. Closing statement by the applicant;
 - 6. Recommendation from the Department of Planning and Zoning.
- g. If a Department of Planning and Zoning staff person, or a party, or a member of the public in opposition to an application wishes to make an organized presentation before the Board with an attorney and/or witnesses, the Chair may place reasonable restrictions on the presentation in terms of the number of witnesses who may testify, the cross examination of witnesses, and the amount of time the Chair will allow for the presentation.
- h. The applicant shall provide documentation offered into the record in a format suitable for presentation at a public hearing, which allows an understanding of the issues relevant to the application and which depicts a contextual relationship between the property which is the subject of the application and the surrounding neighborhood.
- i. Board members may question the applicant, the opposition, and their witnesses and testifying members of the public.
- j. The Chair shall receive relevant, reliable evidence but may limit the admission of evidence that is unnecessarily repetitive or cumulative.
- k. The Chair shall assign exhibit numbers for all written, documentary, and other tangible matter admitted into the record.
- l. The Chair may call and examine witnesses and introduce documentary evidence into the record. The Chair may allow any member of the Board to examine any witness.
- m. The Chair may exclude incompetent, irrelevant, immaterial or unduly repetitious testimony and permit a witness to adopt the prior testimony of another witness.
- n. The Chair shall call for deliberations in accordance with the order for procedure or, in an uncontested hearing, immediately call for deliberations and a vote on the application.
- o. Only those Board members who have actually been present at a proceeding and heard all the evidence and testimony in a proceeding before the Board shall participate in deliberations and vote, except that the Chair is authorized to permit a Board member who has been absent for any portion of a proceeding to listen to the audiotape of all of the testimony to date and read the documentary evidence of record before the proceeding is resumed, and participate in the remainder of the proceeding; including deliberations and vote, and places on the record at the resumption of the proceeding that he or she has done so.

- p. The Chair may use Robert's Rules of Order Newly Revised, as revised from time to time, to make ruling as long as such rulings are not inconsistent with these Rules.
- q. The Chair may recess or adjourn a properly noticed public hearing in progress, or a properly **noticed** public hearing which has not commenced, to a time and place certain which is indicated on the record without additional public notice.
- r. The Chair shall rule on motions at a time that the Chair considers proper. Before ruling, the Chair may allow oral argument and questions by Board members.
- s. The Chair shall close a public hearing.
- t. The Chair may take any other lawful action during the course of a public hearing.

Article 7. Public Testimony on Applications

- a. The Chair shall allow members of the public to present testimony and documentation to the Board.
- b. Members of the public shall indicate whether they are present and participating on behalf of an entity and, if requested by any Board member or party to the proceeding, shall provide documentation to that effect.
- c. Board members may ask questions of any member of the public who participates.
- d. The Chair may allow members of the public and the parties to ask questions of each other if the Chair believes that such questioning would be likely to result in the admission of relevant evidence.
- e. Any member of the public who would like to support or oppose or otherwise comment on an application before the Board shall sign and complete a sign-in statement provided by the Board and may submit oral or written comments, which shall contain the following:
 - 1. name and address;
 - 2. whether he or she supports or opposes the application;
 - 3. the address of the property that will be affected if the application is approved
 - 4. the manner in which the property will be affected;
 - 4. the legal interest that he or she has in the property that would be affected.
- f. To the extent known, any member of the public who would like to support or oppose or otherwise comment on an application before the Board shall state:
 - 1. the distance between the property which is the subject of the application and the property which would be affected;
 - 2. the environmental, economic, social or other impact that would occur to his or her property if the application was granted;
 - 3. explain how his or her interests would likely be impacted more significantly than the interests of others generally.
- g. Any member of the public who would like to support or oppose or otherwise comment on an application before the Board may submit a written statement of support of or opposition for placement into the record in lieu of comment. A written statement shall state

1. An applicant or appellant may appear at a proceeding before the Board pro se or be presented by an attorney or other agent.
2. If represented by an attorney or other agent at a proceeding before the Board, unless the applicant or appellant is at the proceeding, the applicant or appellant shall indicate in writing to the Board that the attorney or other agent has authority to represent the interests of the applicant or appellant at the proceeding.

Article 8. Appeals

- a. The Board shall conduct all appeals in a quasi judicial manner, allowing the appellant and the applicant direct examination, cross examination, re-direct examination and re-cross examination of witnesses.
- b. Paragraphs (e) and (g) through (s) of Article 6 for public hearings, and the evidentiary rules stated in Article 9, shall apply to appeals.
- c. The appellant shall have the burden of proof.
- d. Proof shall be established by a preponderance of evidence.
- e. Public testimony shall not be heard in the case of an appeal unless the Chair, in his discretion, determines that it is in the interests of the City or the general public to do so.

Article 9. Evidence in Applications and Appeals

- a. The Chair shall admit evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, give effect to the rules of privilege recognized by law, and may exclude incompetent, irrelevant, immaterial and unduly repetitions evidence.
- b. The Chair shall relax the rules of evidence which pertain to judicial hearings.

Article 10. Reports of Public Agencies

- a. The Department of Planning and Zoning shall transmit to the Board a report of a public agency applicable to an application or appeal at least 7 days in advance of a public hearing on an application or appeal.
- b. If a report of a public agency is not submitted timely, the report shall be admitted into the record of the proceeding if, in the discretion of the Chair, to do so would not cause significant prejudice to any person participating in the proceeding.
- c. After consultation with the Chair, the Department of Planning and Zoning shall notify those representatives of the public agency who should be present at the public hearing.

Article 11. Expert Witnesses

- a. The Chair may qualify a person who is offered by a party as an expert in a particular field. Before doing so, Board members may ask questions relating to whether a person should be qualified as an expert in a certain field and shall allow any other party to a proceeding to cross examine the person offered as an expert as to that person's qualifications. In determining whether a person offered as an expert witness should be qualified as an expert in a certain field and to express expert opinions, the Chair shall consider:

1. the knowledge, skill, experience, training or education of the person offered as an expert;
 2. the necessity of the testimony for the particular case;
 3. whether the expected testimony is relevant to the particular case.
- b. The Chair shall limit the testimony of expert witnesses to the area of the field of expertise for which they have been qualified.

Article 12. Site Visits

- a. The Board may vote to visit a site which is the subject of a proceeding before the Board.
- c. Before a site visit, the Chair shall place on the record the following rules which shall be observed at a site visit.
- d. Any applicant, appellant or representative of any applicant or appellant who does not intend to be present at a site visit shall place on the record of a proceeding a statement to that effect. Any such person who does not intend to attend a site visit may attend if circumstances change without notice to the Board or others.
- e. All Board members, applicants and appellants and their representatives shall visit the site at the same time.
- e. No testimony shall be taken during a site visit.
- f. No discussions of the facts, applicable law and merits of the proceeding shall occur during a site visit.
- g. Any other reasonable rules that are supported by law.
- g. When a proceeding resumes after a site visit, the Chair shall place on the record the fact that the site visit occurred, the persons present, observations made, and that no such testimony or discussions took place. The Chair shall allow Board members and parties to place their observations about the site visit on the record. The Board shall entertain any suggested corrections of the record of the site visit by those who were in attendance.

Article 13. Voting and Decisions

- a. The Board shall vote no later than 40 days after the conclusion of the public hearing on an appeal and forty-five (45) days after the conclusion the public hearing on an application unless the Chair determines that cause exists to extend.
- b. The Board shall adopt a written decision within 60 days after a vote of the Board, unless the Chair determines that cause exists to extend. Any Board member may write or join in a dissenting opinion.
- c. The vote of at least a majority of the members of the Board hearing an application or appeal is necessary to support a decision.

Article 14. Findings and Conclusions

- a. An applicant or appellant may submit to the Board proposed findings of fact and conclusions of law before the Chair closes a hearing, which the Chair shall admit into the record.

- b. The Chair may permit the record to remain open for a reasonable period of time to allow for the receipt of specific exhibits or legal briefs, and responses thereto, which shall be filed within a time frame set by the Chair.
- c. Any materials received by the Board after the close of the record shall not be received into the record.

Article 15. Reconsideration

- a. An applicant or appellant may file a motion for reconsideration of a final decision of the Board.
- b. A motion for reconsideration shall be filed with the Department of Planning and Zoning no later than 10 days after the date of a final vote by the Board.
- c. A motion for reconsideration shall state specifically the grounds in support of the motion.
- d. A motion for reconsideration shall be served upon the applicant or appellant in whose favor a decision was made.
- e. An applicant or party opposing a motion for reconsideration shall file a written response no later than 7 days after service of the motion.
- f. Notice of a motion for reconsideration shall be given to the public in accordance with the requirements for notice of an original application or appeal.
- g. No evidence not of record at an original hearing shall be considered by the Board, unless the Chair determines that the new evidence could not reasonably have been presented at the original hearing.
- h. The Board, on its own motion made not later than 10 days following the vote on an application or appeal, may decide to reconsider a vote on an application or appeal.
- i. No Board member shall vote on a motion for reconsideration unless the Board member participated in and voted on the original decision.
- j. Unless the Chair orders otherwise, neither the filing nor granting of a motion for reconsideration shall automatically stay the effect of a final decision.

Article 16. Standards for Recusal; Ex Parte Communications

- a. A Board member shall note on the record, before any proceeding before the Board commences, or as soon as he or she realizes after a proceeding has commenced, that he or she has a conflict of interest or may have an appearance of a conflict of interest, and shall describe the conflict of interest or appearance of a conflict of interest. If the Board member believes, as a result, that he or she cannot make any decision related to the proceeding in a fair and impartial manner, he or she shall recuse himself or herself from participating in the proceeding.
- b. If an applicant or appellant in a proceeding requests that the Board member recuse himself or herself, the Board member shall do so, unless the Board member believes he or she can still make fair and impartial decisions related to the proceeding. The Chair may override a decision of a Board member not to recuse himself or herself.

- c. If a recusal results in a failure to have a quorum, the proceeding shall be postponed until there is a quorum, or, if already commenced, the proceeding shall be continued until there is a quorum. A Board member not present after a proceeding in which there is a recusal has commenced may participate when the proceeding is resumed, provided that the Board member has listened to an audiotape of all of the testimony of record to date and has read all of the documentary evidence of record before the proceeding is resumed, and places on the record at the resumption of the proceeding that he or she has done so.
- d. A Board member shall note and describe on the record of a proceeding any off the record ex parte attempt by an applicant or appellant, or an agent of an applicant or appellant, or any other individual, to influence the Board member in any manner related to the proceeding, including but not limited to the Board Member's participation in deliberations or vote. The Board member may recuse himself or herself from participating in the proceeding if he or she believes that he or she cannot make fair and impartial decisions related to the proceeding. In the event of a recusal, the provisions of this Article shall apply if the recusal results in the failure of a quorum.

Article 17. Efforts to obtain further information about a proceeding before the Board

- a. Any Board member may seek information or documentation from the Department of Planning and Zoning prior to the commencement of any hearing before the Board. Each Board member who does so and receives information or documentation shall ask the Chair to admit the information or documentation into the record of a proceeding. The Chair shall permit time for the review of the information or documentation by those participating in the proceeding. The Chair shall admit the information or documentation into the record of the proceeding, subject to any objections sustained by the Chair.
- b. No Board member, either before or during the course of a proceeding to the conclusion of a proceeding, shall discuss or attempt to discuss the facts or applicable law or merits of a proceeding before the Board, or any other matter having to do with a proceeding, with any other Board member, party to the proceeding, member of the public, media outlet, for the purpose of discussing the facts, applicable law or merits of the proceeding, or for any other purpose related to the proceeding.

Article 18. Continuances

- a. The Board may continue a proceeding to the time of any regularly or specially scheduled meeting for good cause shown or on its own motion in the interests of the applicant, appellant or members of the public.
- b. The Board shall hear all arguments of applicants, appellants and members of the public in favor of and in opposition to a request for continuance or the Board's own motion before voting.
- c. The Board shall place on the record of a proceeding all reasons for granting or denying a continuance and shall set a date for a resumption of a proceeding at the time of any grant of a continuance.

Article 19. Withdrawal of Application or Appeal

- a. An applicant or appellant may withdraw an application or appeal, in whole or part, at any time prior to the commencement of the public hearing on the application or appeal.

- b. Withdrawal of an application or appeal after a public hearing has commenced shall not be authorized by the Chair unless, in the discretion of the Chair, to do so would not cause significant prejudice to any person participating in the proceeding.
- c. Filing fees shall not be refunded in the event of a withdrawal of an application or appeal.
- d. The Department of Planning and Zoning shall not accept a new application for filing for at least 90 days after withdrawal.
- e. An application withdrawn shall not be submitted again for filing for at least 90 days after the date of the withdrawal.

Article 20. Closed Sessions; Special Meetings

- a. A closed session or special meeting of the Board may be held at the request of any Board member
- c. Notice of a closed session shall be posted for public purposes at least 10 days in advance of the closed session.

Article 21. Removal

- a. A Board member may be removed by procedure in accordance with the City Code for:
 - 1. incompetence;
 - 2. misconduct;
 - 3. chronic failure to attend meetings;
 - 4. conviction of a misdemeanor bearing on character trait for honesty; or;
 - 5. conviction of a felony.
- b. In the event of a removal, the Mayor's office shall provide the Board member with written notice of the factual basis for and grounds for removal and an opportunity for a public hearing before the City Council to contest the action. The City Council shall either affirm or deny the removal or deny the removal with reasonable conditions.

Article 22. Vacancies

- a. The Mayor shall appoint a person to fill the unexpired term of any Board member who resigns from the Board, is removed from the Board and has exhausted all legal remedies, or is unable to complete his or her term for any other reason, including but not limited to incapacity or death.

Article 23. Officers

- a. The Board shall elect one Board member as Chair and one Board Member as Vice Chair. The Chair shall preside at all meetings of the Board, and in the Chair's absence the Vice Chair shall preside with all powers of the Chair.
- b. The election shall occur at the first meeting in January each year.

Article 24. Rules Not jurisdictional; Compliance

- a. These Rules do not constitute jurisdictional requirements.

- b. Any failure of the Board, the administrative officer or unit of the Department of Planning and Zoning, or any party to a proceeding to comply with any provision of these Rules shall not invalidate an otherwise valid decision or action of the Board.
- c. An application dismissed by the Board for failure to comply with these Rules shall not be submitted again for filing for at least 90 days after the date of the dismissal.

Article 25. Amendment

- a. The Board may amend these Rules at any regular or special meeting of the Board, provided that the proposed amendment has been submitted in writing and has had a public hearing at any previous Board meeting.
- b. Amendments to the City Code that relate to the Board's Rules shall become, upon the effective date of the corresponding ordinance, amendments to these Rules.

Article 26. Waiver of Rules

- a. The Board waive any of these Rules if there is good cause to do so, if the waiver will not prejudice the rights of an applicant or appellant, and if the waiver would not constitute a violation of law.

Article 27. Annual Report

- a. The Director of Planning and Zoning shall prepare an annual report to the Board for approval by the Chair.
- b. The annual report shall state the attendance of Board members, applications and appeals heard by the Board, corresponding decisions rendered by the Board, and recommendations for amendments to the Code or these Rules which would serve to clarify the functions of the Board and provide a continued improvement for performance of board functions.

Approved by:

Derek S. Meyers, AICP, Chair

Christian E. Zazzali, Vice Chair

Robert P. Gallagher, Board Member

Charles F. Martorana, Board Member

Date of Adoption:
Effective Date: