



# **FREDERICK COUNTY BOARD OF APPEALS**

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## **I. MEMBERSHIP, POWERS AND DUTIES**

The membership, powers and duties of the Board are as set forth in Article 66B of the Maryland Code and in the laws and ordinances of Frederick County.

## **II. COMPOSITION**

- A. **Number:** The Board consists of five (5) members as provided by law. In addition, there is one (1) alternate member who is empowered to sit on the Board in the absence of any Member of the Board.
- B. **Appointment:** Members are appointed by the Frederick County Council as provided by law.
- C. **Term:** The term of each Member is three (3) years, or as appointed by the Frederick County Council as provided by law.
- D. **Chair:** The Board shall elect a chair from one of its members to serve a term of one (1) year. The chair shall preside at meetings of the Board and may call special meetings of the Board, may compel the attendance of witnesses through subpoena, and may grant restraining orders to stay actions that are under appeal.
- E. **Vice-Chair:** The Board shall elect a vice-chair from one of its members to serve a term of one (1) year. The vice-chair shall preside over meetings in the absence of the chair and may call special meetings of the Board and may compel the attendance of witnesses through subpoena, and may grant restraining orders to stay actions that are under appeal when the chair is unable to do so under the circumstances.
- F. **Secretary:** The Board shall appoint or have appointed a member of the Frederick County staff to serve as Secretary. The person so appointed shall not be an officer of the County whose decisions may be appealed to the Board. The Secretary shall prepare written minutes of all meetings for approval by the Board.
- G. **Alternate:** The Alternate shall have all powers and duties of a regular Board member when sitting on a case.

### III. FILING OF APPLICATIONS

- A. An official application, inclusive of all required documents, for a **special exception, variance** or **administrative appeal** may be filed at any time prior to 3:00 P. M.
- B. All applications for a **special exception** or **variance** shall include plot plans and/or sketches and all other information necessary for proper consideration of the application as outlined in Sec. 1-19-3.200 (a), as amended. Such drawings shall clearly depict the distance from appropriate property lines to any proposed structure and shall clearly show the relationship between any proposed variance and any appropriate property line. The location of any required parking spaces shall be clearly shown with respect to property lines and/or structures, as appropriate.

All cases involving commercial or industrial properties shall include all materials in a digital format if available to or reasonably obtainable by the party submitting non-electronically stored materials.

- C. **Administrative appeals** to the Board of Appeals must be filed within thirty (30) days after the date of the administrative decision from which an appeal is taken. Time shall be computed as per Section 1-1-2 of the Frederick County Code.
- D. If an application for a special exception is denied or withdrawn with prejudice, no new application for the denied use on the same property shall be refiled for one (1) year after the decision denying or withdrawing the previous application.
- E. If an application for special exception is dismissed or withdrawn without prejudice prior to hearing the application may be refiled pursuant to procedures set forth above.
- F. An application for special exception seeking a different use with regard to a subject property and which has been the subject of a previous application may be submitted pursuant to procedures set forth above.
- G. All applications for special exceptions and variances must be made by a person with a financial, contractual or proprietary interest in the subject property. The Board may require proof of such interest. If there is a conflict in those interests, the person with controlling legal interest shall determine if an application is to be filed.
- H. An appellant in an administrative appeal shall submit material and memoranda to staff and the agency or officer whose decision is being appealed not less than 21 days before the Board's next hearing. The

agency or officer whose decision is being appealed shall submit reply material and memoranda to the staff and the appellant not less than 10 days before the Board's next hearing. Materials submitted, by either party, after said deadlines may result in a 30 day continuance.

**NOTE:** Specific details on the filing of applications are delineated in the Zoning Ordinance.

#### IV. **AGENDA**

The agenda of applications and appeals to be heard shall be maintained by the Secretary and shall be available for public inspection during normal business hours.

#### V. **HEARINGS AND MEETINGS**

##### **Time and Place of Hearings:**

- A. The Board holds regular hearings on the fourth Thursday of every month at 7:00P.M., or at such time as the Board may designate. Special meetings are held upon the call of the Chair or majority of the Board. Dates of the public hearings shall be on the signs on the properties, which are the subject of the special exception, variance, or claim of administrative error before the Board. Notices shall be sent by mail to the applicant and adjoining property owners in the case of special exceptions and variances as required by law and these rules.
- B. **Quorum:** A minimum of three members of the Board shall be required to conduct hearings or any other business of the Board. The Chair shall have the right to make or second motions.
- C. **Continuance of Hearing:** Hearings may be continued from time to time and, if the time and place of the continued hearing be publicly announced at the time of the continuance, no further notice of such continued hearing shall be required; otherwise, notice thereof shall be given as in the case of the original hearing. The Board may grant a continuance at the public hearing for good cause shown.
- D. **Order of Business:** Meetings of the Board may be conducted in the following manner:
  - 1. Approval of the minutes of the previous meeting(s).
  - 2. Overview of the hearing procedures presented by the Chair.

3. Hearing of scheduled cases.
4. Other matter(s) proposed by the Board.
5. Adjournment.

E. **Procedure:**

(A) The hearing of **special exception** and **variance** cases shall be conducted in the following manner:

1. All persons wishing to offer testimony on the case should sign up prior to the case being called, if determined by the Chair, and shall be sworn in.
2. Staff report and agency comments shall be presented and made a part of the record.
3. Applicant, appellant, or agent shall present the request to the Board.
4. Testimony in support of the application or appeal.
5. Testimony in opposition to the application or appeal.
6. Additional relevant testimony either in support or opposition to the application or appeal.
7. Rebuttal testimony by the applicant, appellant or agent if opposition testimony is presented.
8. Letters, written statements, or emailed comments relevant to the case shall be noted for and made a part of the record.
9. In the event the Board continues a case in order to give due consideration to the bulk or complexity of evidence already submitted or calls for any additional material, such materials must be submitted to Board staff not less than 15 days before the Board's next hearing. Materials submitted after that time may result in a 30 day continuance.

(B) The Hearing of **administrative appeals** shall be conducted in the following manner:

1. All persons wishing to offer testimony on the case should sign up prior to the case being called, if determined by the Chair, and shall

be sworn in.

2. Board of Appeals staff report and agency comments shall be presented and made a part of the record.
3. Agency, officer or legal counsel from whom appeal is filed shall present the agency's position to the Board.
4. Appellant or agent presents the case for appeal.
5. Testimony in support of the agency or officer position.
6. Testimony in support of the appeal.
7. Additional relevant testimony either in support or opposition to the appeal.
8. Rebuttal testimony by the appellant or agent to agency testimony.
9. Letters, written statements, or emailed comments relevant to the case shall be noted for and made a part of the record.
10. In the event the Board continues a case in order to give due consideration to the bulk or complexity of evidence already submitted or calls for any additional material, such materials must be submitted to Board staff not less than 15 days before the Board's next hearing. Materials submitted after that time may result in a 30 day continuance.

In each case:

- The applicant, agency or appellant shall have a twenty (20) minute presentation period
- Groups recognized by the Chair shall have ten (10) minutes
- Individuals shall have four (4) minutes
- An applicant, appellant or agency representative shall have rebuttal time of five (5) minutes in cases of opposition testimony.
- The Chair may grant extensions of the time limits unless a Board member raises an objection. Board members and the staff may question the presenter or witness at any time during the hearing; in addition, the Chair may direct a person to respond to a question of the Board.

Cross examination of witnesses in any adjudicative proceeding before the Board shall be permitted. The right to cross-examine witnesses shall be extended only to those persons who are parties to the proceedings before the Board or who have a cognizable interest in the outcome of the

proceedings as determined by the Chair. A person or party wishing to cross examine a witness shall make the request prior to or immediately after the time that the witness has concluded his or her testimony, and the failure to make such a timely request may be deemed a waiver of the right to cross examine as determined by the Chair. The scope of any cross examination shall be reasonable and may be limited, as determined by the Chair, so as to permit a full and true disclosure of the facts, having due regard to the circumstances of each particular case, the nature of the proceedings, and the character of the rights which may be affected by it.

The rules of evidence applicable to administrative hearings as set forth by the Court of Appeals of Maryland shall generally apply. The Board shall conduct hearings in a manner best calculated to afford all parties an opportunity to present their positions and to serve the ends of justice and fairness. The Board may make such rulings as may be necessary to conduct the hearing in an efficient and orderly manner including, but not limited to, imposing time limitations and excluding irrelevant or repetitive evidence. Appellants and applicants are bound by any legal proffers or evidence offered and adopted by the Board as a condition or reason of the Findings and Decision.

- F. **Identification of Parties:** All persons appearing to testify or submit evidence shall identify themselves on the sign-up sheet provided by staff if required by the Chair and again at the podium by name, address and any person or entity they represent. Designated spokesperson for groups shall identify themselves as such as well.
  
- G. **Submission of Case Comments or Materials:** Any letters, written statements, emailed comments, or other materials pertaining to applications made to the Board, shall be submitted to staff no later than 4:00 P.M. on the Monday of the week preceding the Board's scheduled hearing. Any submissions or comments to the Board presented after 4:00 P.M. Monday, must be presented directly to the Board at the scheduled hearing.

Please note that the Board may not have adequate time to consider such documents as submitted during an active hearing.

- H. **Determination by Vote at Hearing:** The majority of the votes cast are required to grant an application or appeal. Failure to obtain the majority of the votes cast shall have the effect of a denial. A tie vote shall constitute a denial of the requested relief. The Board may impose conditions on a grant of a special exception or a variance petition, as provided by law.
  
- I. **Decision:** The Board shall grant or deny each application or appeal in writing. Each grant or denial shall set forth a summary of facts found and reasons for the decision relevant to the pertinent criteria. The Secretary

shall prepare written "Findings and Decisions" for each grant of a special exception, variance or administrative appeal. The decision does not become official and final until signed by all members of the Board who heard the case, usually at the regularly scheduled meeting the month following the hearing(s). For applications in the floodplain areas, the Secretary shall maintain a record of all decisions, including justification for their issuance, and report such decisions issued in the County's biennial report to the Federal Emergency Management Agency.

- J. **Record:** An electronic transcript shall be kept by a recording device, and the record shall be preserved as a public record for a period of three years. The recording may be transcribed stenographically or copied electronically by any interested person at his/her own expense by arrangement with and under the supervision of the Secretary of the Board. If there are discrepancies between recordings, the Board's recording is the official recording. The only official written transcript is that approved by the Secretary.
- K. **Minutes:** Written minutes, showing the disposition of the cases and showing the vote of each member upon the question, shall be approved by the Board, shall be signed by the chair or acting Chair and shall be kept by the Secretary. The signed minutes shall be public record available for inspection. Following a Board of Appeals meeting the draft minutes will be produced within 10 business days of the past meeting and will be adopted, in final form, by the board at the next regularly scheduled meeting.

VI. **WITHDRAWAL OF APPLICATION**

An applicant may withdraw an application at any time.

VII. **RECONSIDERATION**

The Board may entertain a request for reconsideration of a decision.

- A. Parties with a financial, contractual, or proprietary interest, or who became a party of record at the initial hearing may request reconsideration. Such a request must be in writing, must be received within 14 business days after the oral decision of the Board and must set forth the reasons for the request (for example, newly discovered evidence or new case law). The party requesting reconsideration shall also give a written notice to any person who is party or who became a party in the matter at the public hearing. Verification of this notice being sent must be presented to the Board at the time of the written request. No action on any request will be taken except upon a motion by a Board member.

- B. A Board member (whether or not on the prevailing side of a question or at the initial hearing) may make a motion for reconsideration at any Board meeting prior to the final signing of the decision.

If the Board agrees to reconsider a decision and conduct a hearing, such hearing shall not be scheduled any sooner than the Board's next regular meeting, subject to the notice requirements. When a reconsideration hearing is scheduled, notice shall be given as in the case of the original hearing, and shall include any persons who are parties or who became parties at the original hearing. No additional posting of fees will be required.

VIII. **APPEALS TO THE COURTS**

A final decision may be appealed to the Circuit Court as provided for in the State and County Laws. Appeal times begin from the signed, written decision of the Board.

IX. **CONDUCT OF BOARD MEMBERS**

- A. **Speaking for the Board** A member will not appear to speak for the Board except as authorized by the Board. In any public or private statement concerning Board affairs, members will carefully indicate whether they are speaking for the Board or for themselves.
- B. **Gratuities and Entertainment** Members shall not accept gifts or compensation from any persons involved in matters which have come before the member while on the Board or in matters that are reasonable to assume may come before the Board.
- C. **Privileged Information** Members shall not engage in any business transaction in regard to which they have an advantage because of information gained through membership on the Board.
- D. **Conduct at Meetings** Members shall conduct themselves at Board meetings in a fair, understanding and gracious manner. They shall seek to be considerate to all individuals, attitudes and differences of opinion involved on official Board business.

X. **DEFINITIONS**

- A. **Rules of Construction:** The rules of construction found in Section 1-19-11.100 (A) (1) through (13) of the Frederick County Zoning Ordinance shall apply to these bylaws.
- B. **Groups:** Groups recognized by the Chair shall mean any group that has

provided to the Board of Appeals, by close of business one day prior to the hearing in which the group will testify, any of the following; a copy of its bylaws or articles of incorporation, a list of its officers with contact information, or a copy of the latest minutes of the group's meeting.

- C. **Definitions:** The definitions found in Section 1-19-11.100 (B) of the Frederick County Zoning Ordinance shall apply to these bylaws.

XI. **RULES NOT JURISDICTIONAL**

These rules of procedure do not constitute jurisdictional requirements. Failure of the Board, its Staff, or any party to comply with any provisions of these rules of procedure shall not invalidate any otherwise valid decisions or action of the Board.

XII. **AMENDMENTS**

Amendments to this document may be proposed when the majority of the Board deems it necessary.

- XIII These bylaws supersede all previously adopted bylaws.

By-laws adopted September 24, 2020

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Kenneth Farrell, Chair