

THE CITY OF FREDERICK
ZONING BOARD OF APPEALS
RULES OF PROCEDURE

1.0. GENERAL INFORMATION.

1.1. Purpose. These Rules of Procedure (the "Rules") are issued as a guide to assist the Zoning Board of Appeals of The City of Frederick (the "ZBA") in the orderly and efficient conduct of all matters it considers in its exercise of the powers and duties set forth in the Land Use Article of the Maryland Code, the City Charter, and the Frederick City Code, 1966 (as amended) (including Appendix A, the Land Management Code (LMC)).

1.2. Definitions. The following terms have the meanings indicated. Terms not otherwise defined will have the meanings given in the LMC.

- (A) **"Application"** means an application for approval of the ZBA, including but not limited to an application for a variance or conditional use or a petition for administrative review.
- (B) **"Division"** means the City of Frederick's Division of Planning.
- (C) **"Hearing"** means the convening of the ZBA for a public hearing on an application as required by law.
- (D) **"Meeting"** means the convening of the ZBA for purposes of conducting business, including but not limited to hearings, trainings, work sessions, and field trips at which at least a quorum is present.

1.3. Role of staff. Employees of the Division, subject to the direction of the Mayor, shall issue and receive correspondence of the ZBA; supervise the application process, including creating application materials and assisting applicants with the issuance or posting of notices; attend meetings of the ZBA; create and maintain official minutes and other records; and engage in other such administrative duties as necessary in support of the ZBA's exercise of its powers and duties.

2.0. OFFICERS AND MEMBERS.

2.1. Presiding officer.

- (A) Each year, the ZBA shall elect from its membership a chair and a vice-chair for a term of one year. The election will take place during the regular monthly meeting in June or, if there is no such meeting in June, during the first regular monthly meeting thereafter. A chair and a vice-chair may be reelected.
- (B) The chair, or, in the chair's absence, the vice-chair, shall preside at all meetings of the ZBA. In the absence of the chair and the vice-chair, the presiding officer will be determined by an ad hoc consensus of the ZBA members present. The presiding officer shall decide on all points of order and procedure, subject to these Rules.
- (C) Upon the resignation or removal of the chair, the vice-chair shall fill out the unexpired term of the chair and an election for a vice chair shall be held at the next regular meeting of the ZBA.

- (D) The failure of any party to meet the deadlines set forth in this section or to otherwise comply with the LMC may result in the 30-day continuance of the case.

2.2. Attendance. Members of the ZBA have a duty to attend all meetings. Absence, without good reason, from more than half of the regular monthly meetings held during any twelve-month period will constitute cause for removal. A ZBA member may be removed by the Board of Aldermen in accordance with City Charter Article XIV, § 5.

2.3. Ex parte communications. ZBA members should avoid engaging in ex parte communications with applicants or other interested persons. A member who does participate in such an ex parte communication should disclose the communication on the record at the appropriate meeting and submit for the record any relevant written communication or a memorandum that summarizes any oral communication. Alternatively, the member may recuse himself or herself from voting on the case.

3.0. PREHEARING PROCEDURES.

3.1. Applications, generally.

- (A) All applications to the ZBA must be filed with the Division on appropriate forms provided by the Division. An agent authorization form must be submitted if the property owner is not the applicant.
- (B) An application will not be accepted for filing unless it contains complete and accurate information, meets all applicable legal requirements, and is accompanied by any required fee. Applications must be filed in accordance with the submittal requirements of the LMC, the ZBA's approved schedule, and the procedures and deadlines established by the Division.
- (C) In all matters before the ZBA, documents filed by parties or other persons are public information.

3.2. Variances, conditional uses, etc.

- (A) This section applies to any application for a variance, conditional use, or other ZBA approval other than an administrative appeal.
- (B) At the discretion of the Board, the Board may elect to take a field trip to the subject site. Members who cannot attend a scheduled field trip are encouraged to familiarize themselves with the property prior to the hearing. Failure to attend a field trip does not render a member ineligible to vote on an application.

3.3. Administrative appeals.

- (A) This section applies to appeals filed pursuant to LMC § 315.
- (B) The applicant shall file a prehearing statement with the Division no later than 20 days prior to the date set for the hearing, with copies to all parties of record. The statement must include the following information:

- (1) a statement of the grounds upon which the appeal is based (which may be the same as that included with the petition for administrative review);
 - (2) copies of all reports, studies, and other documents intended to be introduced at the hearing;
 - (3) a summary of expert testimony and credentials that will be offered at the hearing; and
 - (4) estimated time required for presentation.
- (C) The administrative officer whose decision is being appealed and any person or association intending to appear in opposition to the appeal shall file a similar prehearing statement no later than 7 days prior to the date set for the hearing, with copies to all parties of record. Nothing in this section should be construed to limit the right of an individual member of the public to submit testimony during the hearing or to submit pertinent written materials at any time prior to or during the hearing.
- (D) The failure of any party to meet the deadlines set forth in this section may result in the 30-day continuance of the case.

4.0. MEETINGS.

4.1. Location. Generally, meetings of the ZBA will be held at City Hall, 101 North Court Street, Frederick. However, meetings may be held in the Municipal Office Annex, 140 West Patrick Street, Frederick, or other locations at the direction of the ZBA or the Division.

4.2. Scheduling. Generally, regular monthly meetings will be held once a month on the fourth Tuesday of the month. However, a meeting may be scheduled on a different date to account for holidays or other such events. In addition, meetings may be held as often as necessary, at the call of the chair or upon request of at least two other members of the ZBA.

4.3. Cancellation. In the event that a meeting must be cancelled due to inclement weather or other such reason, the Division will notify each ZBA member by telephone or email and will notify the public via the City's website and cable television channel 99.

4.4. Agenda. The Division will prepare the regular monthly meeting agenda. Unscheduled items not requiring public notice may be added to the agenda during the meeting if they are presented in writing and their addition is approved by the majority of the ZBA members present. Discussion of such items will be recorded in the minutes. The presiding officer may change the order of the items before and during a meeting.

4.5. Order. The order of business for a regular monthly meeting will generally be as follows:

- (A) call to order;
- (B) announcements;
- (C) approval of meeting minutes;

- (D) swearing of witnesses;
- (E) old business;
- (F) new business;
- (G) items added to agenda;
- (H) general public comment, not about a case on the agenda;
- (I) adjournment.

4.6. Record. The Division shall keep a record of the ZBA's proceedings and actions at all meetings. The record will include recordings or minutes, and will be available for public inspection during ordinary business hours at the Division offices in accordance with the Maryland Open Meetings Act. The minutes will be typed and distributed to ZBA members, and, once approved, will become part of the official record.

4.7. Swearing of witnesses.

- (A) The presiding officer shall administer the following oath to all witnesses testifying in any matter coming before the ZBA:

"Do you solemnly swear or affirm that the responses given and statements made in this hearing before the Zoning Board of Appeals will be the whole truth and nothing but the truth? If so, answer 'I do.'"

- (B) The presiding officer may administer the oath en masse at the outset of the hearing to all prospective witnesses intending to testify on any case.
- (C) Before giving testimony, each witness shall state his or her name and, if not previously sworn, shall so state. The presiding officer will administer the oath individually to any witness who has not been sworn before that witness gives testimony.
- (D) Any person refusing to be sworn will not be permitted to testify.

4.8. Attendance by applicants. The applicant or the applicant's agent must attend all hearings at which said application is scheduled to be considered. In the absence of any personal appearance on behalf of the applicant or applicant's authorized agent, the ZBA will continue the application until the next regularly scheduled meeting. If the applicant fails to appear at that meeting, the application shall be deemed withdrawn.

4.9. Public participation. All ZBA meetings are open to the public, as required by law. The ZBA may invite public testimony at appropriate times during meetings. The ZBA may establish reasonable time limits and registration requirements for speakers at meetings, so that all may have an opportunity to be heard.

5.0. HEARINGS.

5.1. Parties. An individual or any other legal entity may become a party to a proceeding before the

Board by:

- (A) providing the name, address and signature of the individual or entity (and the entity's duly authorized representative) on a sign-up sheet provided by the ZBA;
- (B) testifying before the ZBA and providing it with the name and address of the party;
- (C) delivering a letter to the ZBA, received before the hearing in the case, indicating that the individual or entity is an interested party to the matter before the ZBA and providing the party's name, address and signature.

5.2. Administrative appeals. The hearing of administrative appeals cases will generally be conducted in the following order:

- (A) presentation of the papers constituting the record of the action appealed; notation of any objections to any part of the record, and any other preliminary matters;
- (B) presentation of evidence and testimony by the applicant;
- (C) presentation of evidence and testimony by the administrative official whose decision is being appealed;
- (D) testimony in support of or in opposition to petition;
- (E) rebuttal by petitioner;
- (F) closing statements by petitioner and administrative official;
- (G) ZBA discussion and motion; and
- (H) ZBA action.

5.3. Variances, conditional uses, etc. The hearing of these cases will generally be conducted in the following order:

- (A) introduction of case by presiding officer;
- (B) presentation of case by staff;
- (C) presentation of case by applicant or agent;
- (D) testimony in support of or in opposition to application;
- (E) rebuttal by applicant or agent;
- (F) ZBA discussion and motion; and
- (G) ZBA action.

5.4. Questioning by ZBA. ZBA members may ask questions of staff, the applicant, or any witness at

any time during the hearing.

5.5. Record. Each item submitted into evidence shall be duly numbered, made a part of the official record, and included in the appropriate case file. The ZBA may require photographs or reproductions to be substituted in lieu of large or bulky exhibits.

5.6. Procedural rulings. The ZBA may make such rulings as may be necessary to conduct the hearing in an efficient and orderly manner, including, but not limited to, excluding irrelevant or repetitive evidence.

5.7. Cross-examination. Cross-examination of witnesses by any party to a case is permitted; however, questioning must be confined as closely as possible to the scope of the direct testimony of the witness. A 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 presiding officer. Repetitious questions and examination on irrelevant matters will not be permitted.

5.8. Subpoenas. The ZBA may compel the attendance of witnesses. Persons requesting the Board to issue a subpoena shall submit a written request to the Division at least 21 days before the hearing. 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 person's expected testimony, and a list of all documents to be brought to the hearing by the subpoenaed person. The subpoena will be signed by the chair, or, if the chair is unavailable, the vice chair. Subpoenas may be served by certified mail or by anyone who could lawfully serve said subpoena in a judicial proceeding of a civil nature. A subpoena must be served at least 10 days before the hearing.

6.0. VOTING AND DECISION.

6.1. Quorum. A quorum for each case is four members. A member who is ineligible to vote on a particular application for ethical or other reasons is not included for purposes of determining a quorum for that application. No decision may be made in the absence of a quorum.

6.2. Eligibility.

- (A)** In order to be eligible to vote on an application, a member must have attended any ZBA meeting at which the application was discussed. This requirement does not include field trips, per Section 3.2 above.
- (B)** If a member is absent from any such meeting, the member:
 - (1)** must have reviewed the minutes or listened to the recording thereof in order to vote on the application; and
 - (2)** should enter into the record an oral or written statement that he or she has reviewed the minutes or listened to the recording.
- (C)** There is a rebuttable presumption that a member is eligible to vote; failure to enter a statement does not render the member ineligible to vote.

6.3. Presiding officer. The chair or other presiding officer may make motions and vote in all cases.

6.4. Alternate. The alternate member (or temporary alternate) may vote if there is a vacancy in the membership of the ZBA or if a regular member is absent or disqualified from voting on a particular application. The alternate member may participate in ZBA discussions only of cases on which he or she will be voting.

6.5. Continuances. An applicant or authorized agent may request a continuance to the next meeting or other specified meeting. An applicant may make such request either in writing in advance of the originally scheduled hearing, or orally on the record at the scheduled hearing. An application will not be continued more than three times or for more than 120 days, whichever is longer. An application that is continued for more than 90 days must be readvertised in accordance with LMC § 301. After that time, the application will be deemed withdrawn; the applicant may submit a new application along with any required fee.

6.6. Results. Questions put to a vote are decided by a majority of the members present and voting. A tie vote will be interpreted as a defeat of the motion upon which the vote was taken. Members' votes will be taken by hand or voice on each motion. The minutes will record the vote or abstention of each member.

6.7. Final decision. The Board will make a decision on each case orally on the record by motion and voting in accordance with these Rules. The oral decision of the Board is the final decision in each case, subject to reconsideration as provided in these Rules. The Division will send a written notification to the applicant summarizing the findings and conclusions and indicating the final decision, including any conditions.

7.0. RECONSIDERATION.

7.1. Petition. The ZBA may reconsider a prior action, except for an administrative appeal, based on mistake, inadvertence, surprise, or fraud. The Zoning Administrator or an applicant may ask the ZBA for reconsideration of that case by filing a written request with the Division. The request must be received by the Division within 14 business days after the oral decision of the ZBA. The chair may waive the filing deadline for good cause shown. Any party filing a petition for reconsideration must serve a copy of its petition on every other party to the case.

7.2. Decision to reconsider. At the next regular meeting following the timely filing of a petition for reconsideration, the ZBA shall hold a public hearing for the purpose of considering whether to grant the request for reconsideration. Such public hearing is not subject to the public notice requirements of LMC § 301. A motion to reconsider may be made only by a member of the ZBA who voted in favor of the decision that is subject to the request for reconsideration. If the ZBA votes to reconsider, the final action to be reconsidered will be void.

7.3. New decision. Promptly after a decision by the ZBA to reconsider a prior action, the Division shall schedule a public hearing for the purpose of allowing the ZBA to make a new decision on the case. The public hearing will be held in the same manner as the original public hearing, but the ZBA may accept additional evidence or testimony proffered by any party or the Division.

7.4. Appeals. A request for reconsideration has no effect on the process or deadline for filing a petition for judicial review of the original decision.

8.0. SUSPENSION AND AMENDMENT

8.1. Suspension of Rules. Any provision of these Rules not governed by the City Charter or the City Code may be temporarily suspended by an affirmative vote of a majority of the ZBA members present. The vote of any such suspension shall be taken and entered upon the record.

8.2. Amendment of Rules. These Rules may be amended, or new rules adopted, by a majority vote of all members of the ZBA, provided that the proposed amendment or new rules have been introduced into the record at a prior ZBA meeting.

APPROVED BY THE ZONING BOARD OF APPEALS:



Jim Racheff, Chair

3/4/2016

Date