

**RULES OF PRACTICE AND PROCEDURE OF
COUNTY BOARD OF APPEALS**

[Rev. Bill No. 50-05; effective 5/30/05]

Rule 1. General.

a. The county board of appeals shall select one of its members to be the chairman of the board, and he shall serve as chairman at the pleasure of the board. The chairman shall preside at all meetings of the county board of appeals, and in his absence he shall designate another member of the board to sit in his place as acting chairman.

b. Meetings of the county board shall be held as determined by the chairman, but never less than weekly; and the board shall meet at such other times as the board may determine.

c. Three (3) members of the board of appeals, as designated by the chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision, except as follows:

I. During the course of a hearing, if any member of the original panel is unable to continue to serve, the chairman shall appoint a member to fill the vacancy; or [Bill 50-05]

II. In the case of a remand, if any member of the original panel is unable to serve, the chairman shall appoint a member to fill the vacancy. [Bill 50-05]

d. All appeals to the board from decisions of the zoning commissioner or deputy zoning commissioner shall be in conformance with the rules of the zoning commissioner of Baltimore County with respect to the form of appeal, and the filing fees shall be as established either by said rules of the zoning commissioner or by the Baltimore County Zoning Regulations. [Bill 50-05]

e. Unless authorized by the board, a person may not take photographs, motion pictures or audio or video recordings of any kind during the conduct of a hearing before the board or during any public deliberation of the board. [Bill 50-05]

Rule 2. Notice.

a. No hearing shall be conducted without at least ten (10) days' notice to all parties of record or their counsel of record, unless otherwise agreed to by all such parties or their counsel of record.

b. Postponements and continuances will be granted at the discretion of the board only upon request in writing by an attorney of record or a party of record (if not represented by counsel), addressed to the board and with a copy to every other attorney of record, or party of record (if not represented by counsel) entitled to receive notice, in accordance with § 500.11 of the *Baltimore County Zoning Regulations*, setting forth good and sufficient reasons for the requested postponement. [Bill 50-05]

c. No postponement shall be granted within fifteen (15) days next prior to the hearing date except in extraordinary circumstances and for a reason satisfactory to the board, given by the party requesting

such postponement indicating that the circumstances requiring the postponement are of an unusual and extraordinary nature.

d. All records and dockets of the board shall be open to the public during normal business hours.

e. In appeals from decisions of the zoning commissioner, formal notice of hearings, continuances and decisions of the board will be provided only to those persons entitled to receive same in accordance with § 500.11 of the *Baltimore County Zoning Regulations*.

Rule 3. Appeals.

a. No appeal shall be entertained by the board of appeals unless the notice of appeal shall state the names and addresses of the persons taking such appeal.

b. I. An appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal.

II. A request for withdrawal of a petition shall be filed in writing with the board. A petitioner who wishes to have a petition withdrawn and dismissed without prejudice shall withdraw the petition not less than 10 days before the scheduled hearing date. A petition that is withdrawn less than 10 days before the scheduled hearing date shall be dismissed with prejudice. A petition that is dismissed with prejudice under this paragraph may not be resubmitted for a period of 18 months after the dismissal. [Bill 50-05]

c. Unless otherwise provided for by statute, all appeals to the board of appeals, subject to and limited by statutory authority to hear appeals, shall be made within thirty (30) days from the date of the final action appealed.

Rule 4. Conduct of hearings.

a. All hearings held by the county board of appeals shall be open to the public. No hearing shall be private even though all parties agree. The county board of appeals shall have the power to administer oaths, and all witnesses shall testify under oath.

b. The chairman shall regulate the course of the hearing and shall rule upon procedural matters, applications, modifications and objections made during the course of the hearing, subject to the concurrence of a majority of the board conducting the hearing.

c. A hearing may be adjourned from time to time for good cause shown and if the time and place of reconvening the hearing is announced at adjournment, no further notice of reconvening shall be required. If the time and place of reconvening is not announced at adjournment, notice of time and place of reconvening shall be given as required in rule 2a.

- d. Depositions shall not be allowed unless by agreement of all parties or their counsel of record.

Rule 5. Subpoenas.

a. The county board of appeals shall have the power to compel the attendance of witnesses and to require the production of records and documentary or other tangible evidence.

b. The board may cause subpoenas and subpoenas *duces tecum* to be issued upon its own motion, or upon the application of any party to any hearing; but subpoenas will not be issued upon application unless such application is in writing and sets forth the persons, records, books, papers or other documents to be produced and a general statement as the purpose.

Rule 6. Appearances and practice before the board of appeals.

a. Any individual who is a party to a proceeding before the board may appear in his own behalf; and a member of a partnership may appear as representing said partnership if it is a party; a duly authorized officer of a corporation, trust or an association may appear as representing said body, if it is a party to the proceedings; and a duly authorized officer or an employee of any political subdivision or body or department may represent the same before the board.

b. Any party may be represented in any proceeding by an attorney-at-law admitted to practice before the Court of Appeals of Maryland.

c. No person shall appear before the board in a representative capacity, engage in practice, examine witnesses or otherwise act in a representative capacity except as provided in sections a. and b. above.

d. When an attorney wishes to appear in any proceeding in a representative capacity which involves a hearing before the county board of appeals, he shall file with the board a written notice of such appearance, which shall state his name, address, telephone number, and the names and addresses of the persons on whose behalf he has entered his appearance.

Rule 7. Evidence.

a. Any evidence which would be admissible under the general rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the county board of appeals. Proceedings before the board being administrative in nature, the board will not be bound by the technical rules of evidence but will apply such rules to the end that needful and proper evidence shall be most conveniently, inexpensively and speedily produced while preserving the substantial rights of the parties. Any oral or documentary evidence may be received; but the board reserves the right as a matter of policy to provide for the exclusion of immaterial or unduly repetitious evidence, and the number of

witnesses may be limited if it appears that their testimony may be merely cumulative.

b. All evidence, including records and documents in the possession of the agency, of which it desires to avail itself, shall be offered and made part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

c. Prepared statements may be read by participants in the hearing if they include factual material and do not include argument, provided copies of said statements have been delivered to the board and opposing counsel at least five (5) days prior to the hearing, and their admissibility ruled upon, the same as if the factual content were presented in the usual manner. "Prepared statements" within the meaning of this section shall not include factual reports, written summations, letters, expert opinions of professional expert witnesses and other such similar documents.

d. Except as may otherwise be provided by statute or regulations, the proponent of action to be taken by the board shall have the burden of proof.

e. Any official record or entries therein when admissible for any purpose may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, and the appearance of the officer will not be required unless demanded by a party to the case and for good cause shown to the board. This rule does not prevent any party from summoning any proper witness to attend any hearing before the board.

f. Records of other proceedings before the board may be offered in evidence by the production of the files containing said records of such other proceedings.

g. In such cases as the board may determine, it may by order require that the direct testimony of all "expert" witnesses be submitted in writing, accompanied by copies of all exhibits to which reference is therein made, unless such are of a voluminous nature or within the files of, or readily available to, the board of appeals, in which case adequate reference shall be made thereto, which testimony shall be submitted by the parties required so to do and under the time and service provisions as contained in said order. Thereafter, said "expert" witnesses shall be personally present at the hearing for affirmation of their written statement and exhibits previously submitted and for cross-examination.

Rule 8. Special rule pertaining to persons appearing before the board as representatives of civic or improvement associations.

a. Before any person shall testify on behalf of any civic or improvement association, it shall be shown that he has accurate knowledge of the number of members in the association and geographical limits of the association.

b. Before any such person shall testify it shall also be shown that he is authorized to speak for and present the views of the civic or improvement association.

c. Such authorization shall consist of presenting at the hearing or prior thereto a resolution in

duplicate duly adopted by the association at its annual meeting, first meeting of each year, or a special meeting of the association, signed by the president and attested by the secretary, providing that the responsibility for review and action on all zoning matters be placed in its board of directors or a duly elected zoning committee. [Bill 50-05]

d. Before any such authorized person shall testify, it shall be shown by written affidavit in duplicate, signed by the president of the association and attested by the secretary, that he is currently a duly elected member of the board of directors or zoning committee of that association, or is an attorney appointed to represent the board of directors or zoning committee.

e. Before any such authorized person shall testify, a resolution stating the position of the association as adopted by the board of directors or zoning committee, signed by the president and attested by the secretary, shall also be produced in duplicate at the hearing.

Rule 9. Special rule pertaining to original petitions for reclassification, special exception and/or variance.

a. Application of Rule: This rule shall apply only to petitions for reclassification, special exception and/or variance filed with the board pursuant to § 32-3-501, Article 32, Title 3, Subtitle 5 of the Baltimore County Code, 2003, as now in force and effect or as hereafter amended. It applies to the filing, processing, advertising and scheduling of hearings on such petitions and is supplemental to such other rules of the board and § 32-3-501, Article 32, Title 3, Subtitle 5 of the Baltimore County Code, 2003 as now in force and effect or as are hereafter amended or adopted. Once filed and scheduled for hearing under the provisions of this special rule, such petitions shall be heard and decided in accordance with all other rules of the board. [Bill 50-05]

b. Definition of Petition. As used herein the term "petition" shall mean:

1. Request for reclassifications of property, including all material filed with said request.
2. Request for special exceptions and/or variances, the granting of which are dependent upon a reclassification of the property in question, including all material filed therewith.

c. Filing.

1. Petitions may be filed in the office of the board of appeals throughout the year, except during the period from April 16, 1979, through October 15, 1980, and all like periods beginning on April 16, 1983, and every fourth year thereafter.
2. Petitions accepted for filing no later than 45 days prior to April 16 will be processed during the April-October cycle, and petitions accepted for filing no later than 45 days prior to October 16 will be processed during the October-April cycle.

3. Notwithstanding paragraphs 1. and 2. above, petitions exempted from the regular cyclical procedure due to public interest or because of emergency may be filed and processed at any time.
- d. Processing and File Maintenance Procedure.
1. Upon receipt of a petition, the board shall establish a file and promptly transmit it to the zoning commissioner's office for processing and preparation of a written report. Said report shall be prepared by the zoning staff; shall reflect the comments of the zoning plans advisory committee; and shall indicate the petition's compliance, with regard to the zoning laws and regulations, and each reviewing agency's adopted standards or policies.
 2. Petitions may be amended prior to the hearing only if said amendment takes place prior to the first public advertisement of the petition.
 3. The zoning staff shall maintain possession of said file throughout the zoning review and report processing procedure.
 4. Upon completion of the zoning review and report process, including distribution of copies of pertinent material to the planning staff, and the necessary advertising and posting, the file, complete with the zoning report and planning board recommendations, shall be returned to the board for the hearing.
 5. The board shall maintain possession of the file until such time as the case has been completed with all pending appeals satisfied. Thereafter, said file shall be returned to the zoning office for microfilming and retention on behalf of the board.
- e. Scheduling.
1. The zoning staff shall schedule and otherwise prepare the necessary newspaper advertisements and arrange for the posting of property in accordance with Article 32, Title 3, Subtitle 5 of the Baltimore County Code, 2003. However, all hearing dates and times shall be established by the board. **[Bill 50-05]**
 2. All postponed hearings shall be re-advertised and the properties posted in accordance with the requirements for final advertising and posting pursuant to Article 32, Title 3, Subtitle 5 of the Baltimore County Code, 2003. The cost of such advertising and posting shall be borne by the party requesting the postponement. **[Bill 50-05]**
- f. Guide for Preparation of Reclassification Petitions.

Each petition request shall be filed on forms provided by the county board of appeals. As a matter of convenience, the board will make available a guide containing information for use in the preparation of petitions for reclassification.

Rule 10. Motion for reconsideration.

A party may file a motion for reconsideration of an order of the board of appeals. The motion shall be filed within thirty (30) days after the date of the original order. The motion shall state with specificity the grounds and reasons for the motion. The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review. After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion. Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case. Within 30 days after the date of the board's ruling on the motion for reconsideration, any party aggrieved by the decision shall file a petition for judicial review. The petition for judicial review shall request judicial review of the board's original order, the board's ruling on the motion for reconsideration or both. [Bill 50-05]

Rule 11. Revisory power of the board.

Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity.

Rule 12. Amendments of rules.

These rules may be amended from time to time in accordance with § 603 of the *Baltimore County Charter*.

05/30/2005
[Bill 50-05]