



## Howard County Board of Appeals

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Mr. Gene Ryan  
Chairperson, Howard County Board of Appeals

May 29, 2025

The Honorable Liz Walsh  
Chairperson, Howard County Council  
3430 Court House Drive  
Ellicott City, MD 21043

Dear Chairperson Walsh,

On behalf of the Howard County Board of Appeals, I respectfully submit for your consideration the recently amended and adopted *Rules of Practice and Procedure of the Board of Appeals*. Over the course of 14 months, the Board engaged in an extensive and thoughtful review process—spanning more than 35 meetings and totaling over 275 hours. The resulting rules were carefully developed, thoroughly evaluated, and formally approved by the Board in accordance with the requirements of the Howard County Charter. They are now submitted to the County Council for enactment by resolution, as required under the Charter.

The proposed Rules of Practice and Procedure represent the first comprehensive review and update undertaken by the Board in more than 35 years. The revisions are intended to clarify procedural requirements, enhance the efficiency of hearings, and ensure consistency with current legal standards and best practices. Central to this effort was the Board's commitment to establishing a process that is transparent, equitable, and cost-efficient for all participants, with particular attention to the needs of community members who interact with the Board.

During this effort, the Board identified several provisions within the existing County Code and Zoning Regulations that are inconsistent, incompatible, or redundant with the updated procedures. To address these discrepancies—some of which have persisted for many years—we are also submitting a companion list of recommended amendments to the relevant sections of the Code, separate from the proposed Rules of Practice and Procedure.

To support the Council's review and promote transparency, we are including the following materials:

- A chart summarizing all public input received during the rulemaking process, along with the Board's responses and actions taken in response;
- Documentation of the legal sufficiency review conducted on the proposed rules, including the Board's resulting actions and decisions.

We respectfully request that the amended and approved Rule of Practice and Procedure be introduced to the Council and approved through resolution so that these rules may take effect with the full force of law. Please let me know if any additional information or documentation is required to facilitate this process. I, along with my fellow Board members, would be happy to appear before the Council to answer questions or provide further explanation.

Thank you for your attention to this matter and your continued support of the Board's work.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. B. .", is written over the printed name "Chairperson".

Chairperson

Howard County Board of Appeals

# Howard County Board of Appeals

## Briefing Paper: Summary of Proposed Rule Changes (2025 Update)



**Prepared by: Gene Ryan, Chairperson**

**In coordination with Board members Lynn Foehrkolb, Felita Phillips, and Robyn Harris.**

**Date: June 16, 2025**

## Purpose of the Document

This document provides a high-level comparative analysis of the proposed revisions to the Rules of Procedure for the Howard County Board of Appeals. These proposed changes are designed to increase operational clarity, ensure procedural fairness, and modernize Board functions.



# Summary of Substantive Changes:

## Existing vs. Proposed Rules of Procedure

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### 1. Structure & Style Modernization

#### ◆ Existing Rules:

- Codified as brief code sections (2.200–2.213) and scattered elsewhere.
- Sparsely detailed, legally compliant, but inconsistent and lacking in procedural clarity.
- Minimal delineation of individual roles.

#### ◆ Proposed Rules:

- Defines **Clerk**, **Administrator**, **Administrative Assistants**, and a **Legal Advisor**, each with specific roles:
  - **Clerk** handles custody of records.
  - **Administrator** oversees public notice, dockets, agendas, scheduling, minutes, and website postings.
  - **Legal Advisor** required to attend meetings, provide legal advice, write legal memoranda, assist with minority opinions, and brief the Board on litigation.



#### Impact:

Dramatically professionalizes the Board's operations, providing a robust internal checks-and-balances system and operational transparency.

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### 2. Petition Process

#### ◆ Existing Rules:

- Petition forms obtained from the Department of Planning and Zoning.
- Submissions can be amended informally before or during hearings.
- Petitioner responsible for all information accuracy and completeness, but no enforcement mechanism.

#### ◆ Proposed Rules:

- Only **Board-approved forms** allowed; eliminating ambiguity and external document inconsistencies.
- Greater emphasis on **Petitioner responsibility** for accuracy, timeliness, and contact information updates.
- Amendments may **only occur in public hearings**; prior remand and continuance processes clarified and formalized.

- Scheduling system mandates **docketing within 2 days** of a complete submission, and scheduling orders must be issued within **2 additional days**.
- Rules expand upon **fee refund eligibility**, codifying that reversed agency decisions trigger a full refund upon request.

#### **Impact:**

These provisions reduce procedural irregularities, increase administrative control and accountability, encourage early case organization, while reducing opportunities for procedural delay or abuse.

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### **3. Public Notice – Modernization and Digital Shift**

#### ◆ **Existing Rules:**

- Required posting and newspaper ads for all petitions; significant procedural cost and burden on petitioners
- Extensive poster requirements, with DPZ approval and signage logistics handled manually.
- Petitioner bears responsibility for compliance, with good-faith standards for noncompliance.

#### ◆ **Proposed Rules:**

- **Newspaper ads phased out** after 60 days; permanent shift to **web-based notice** on Board website and County Notice Board.
- Posters still required, but must include **web addresses**
- Enhanced **sign posting** rules include requirements for affidavits
- Board now prescribes **forms for affidavits**, requires **photos of signage**, and introduces **immediate reposting obligations** after weather or vandalism.

#### **Impact:**

Cost-effective, transparent, accessible, and environmentally sustainable. Reduces cost and complexity for petitioners while dramatically improving public transparency and access through centralized online posting.

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### **4. Hearings, Scheduling & Deliberations**

#### ◆ **Existing Rules:**

- Chair schedules meetings.
- Hearings must be public and open.
- Recess or removal for disruptions permitted.
- Limited details on how testimony is managed.

#### ◆ **Proposed Rules:**

- Explicitly permits **virtual participation** formalized with camera-on rules and pre-hearing tech roll calls.
- Hearings rotate between **daytime and evening**, up to **once per week**.
- **New Agenda & Public Participation Rules** mandates **public agendas 24 hours in advance**, limits disruptive behavior, and clarifies procedures for testimony and sign-up.
- Detailed rules for **continuances**, requiring “compelling circumstances” with documented justification.
- Defines eligibility for **voting and decision-making** to only those present for **entirety of proceedings**.
- Adds **testimony registration protocols**, public sign-up deadlines, and online tools for participation.
- Explicitly **prohibits non permissible ex parte** communication and supports public disclosure requirements of any ex parte communications.
- **Work Sessions Formalized**: Introduces clear protocols for **deliberative work sessions**, including SME testimony, agenda control, and open attendance.

#### **Impact:**

Provides structure, access, and consistency. Reinforces due process, open government, and protects the evidentiary integrity of the record. Enhances procedural fairness, especially for public participants and parties with scheduling conflicts.

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## **5. Expanded Ethical and Legal Safeguards**

### ◆ **Existing Rules:**

- Minimal reference to ethics or conflicts.
- No formal training or compliance mechanisms.

### ◆ **Proposed Rules:**

- New ethics rule (Rule 8.0) requires **disqualification for bias, the appearance of impropriety (actual or perceived), and conflict of interest**.
- Board members **barred from serving** on other boards, holding office, or working for Howard County government during service.
- Board must proactively **certify impartiality** in each case.
- Strengthens legal advisor role by requiring confidential memos of law and case summaries.

#### **Impact:**

Significantly strengthens conflict-of-interest management and formalizes advisory legal support, judicial independence, public trust, and institutional neutrality.

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## 6. Mandatory Training & Continuing Education

### ◆ Existing Rules:

- Very limited training, professional development, or formal education requirements

### ◆ Proposed Rules:

- **Within 6 months**, members must complete a state-certified
  - Maryland Planning Board Education Course
  - Local land use curriculum
- Detailed approval process and documentation required for continuing education
- **Annual 5-hour and biannual 3-hour CE requirements**, with topics including:
  - Planning, zoning, Maryland Land Use Law
  - Howard County General Plan
  - Quasi-judicial process.

### Impact:

Enhances decision-making quality and reduces legal risk by ensuring members understand core law, procedures, and policy. Institutionalizes professional development to improve the legal, procedural, and planning literacy of Board members.

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## 7. Evidence & Expert Testimony

### ◆ Existing Rules:

- Lacks detailed rules for admitting or qualifying expert testimony.

### ◆ Proposed Rules:

- Technical reports must be submitted **10 days prior** in digital and hard copy form.
- Testimony from experts only admissible if they are formally **qualified** based on specific criteria (e.g., experience, relevance, factual basis).

### Impact:

Adds rigor to evidentiary submissions and levels the playing field in contested matters.

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## 8. Revisory Power and Decision Finality

### ◆ Existing Rules:

- Motions for reconsideration allowed within 15 days of a decision.
- Clerical corrections permitted at any time.



#### ◆ Proposed Rules:

- Retains those powers but adds a strict **deadline of 7 days post-deliberation** for requesting fee refunds.
- Clarifies that **appeal periods are not tolled** unless the Board formally suspends the decision.

#### ⚖️ Impact:

Adds predictability to final orders and tightens post-decision timelines to improve docket management.

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## 9. Technology and Record-Keeping

#### ◆ Existing Rules:

- Paper-based; no rule for streaming or online publication.

#### ◆ Proposed Rules:

- All documents and scheduling orders to be **uploaded to the website**.
- **Live-streaming, transcription, and video archives** mandated for hearings.
- Electronically timestamped submission protocols and “case envelopes” standardized.

#### ⚖️ Impact:

Makes the process more transparent and accessible while future-proofing the Board’s archival and administrative systems.

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## ✖️ Summary Matrix: Major Contrasts

<u>Category</u>	<u>Existing Rules</u>	<u>Proposed Rules (2025)</u>	<u>Impact</u>
<b>Board Roles</b>	Minimal clarity	Fully defined roles for staff and legal counsel	Institutional structure
<b>Petitions</b>	Informal, paper-driven	Form-specific, digital, time-bound	Administrative control
<b>Public Notice</b>	Newspaper + signs	Web + signs; phased out print	Cost savings + transparency
<b>Hearings</b>	Open/public but basic rules	Virtual, orderly, scheduled, recorded	Inclusivity + fairness
<b>Ethics</b>	Minimal	Disqualification, exclusivity, conflict protocols	Public trust
<b>Training</b>	Limited	Mandatory legal/planning education	Professionalization

<b><u>Category</u></b>	<b><u>Existing Rules</u></b>	<b><u>Proposed Rules (2025)</u></b>	<b><u>Impact</u></b>
<b>Evidence</b>	Basic	Qualified expert rules, deadlines	Fairness + legal defensibility
<b>Revisory Power</b>	Present	Clarified, tightened timelines	Procedural efficiency
<b>Tech Use</b>	Absent	Streaming, digital filing, online calendars	Modernization

# Executive Summary of Proposed Changes by Rule Section

## Introduction

- Details the origin of the Board’s Rules of Procedure (ROP).
  - Introduces a requirement for **annual public review** of the ROP.
  - Applies **Howard County Employee Manual** policies, including those addressing workplace harassment and violence.
  - Introduces a new **BOA User’s Guide** and an **online public resource hub** for access to BOA information.
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## Applicability

- Clarifies the **hierarchy of regulations** and the authority of the Board’s ROP.
  - Establishes clear **applicability language** to ensure transparency, predictability, and compliance with government rules.
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## Definitions

- Creates a **comprehensive, user-friendly glossary** of terms commonly used in quasi-judicial proceedings, including locally specific terminology.
  - Updates the title of “County Solicitor” to “**Legal Advisor**”, focusing on function rather than individual identity to ensure long-term clarity.
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## Rule 1.0 – Organization

- Reaffirms the **independence of the BOA**.
  - Establishes the new position of **Alternate Member**.
  - Clearly defines roles and responsibilities of all members, including the **Chairperson** and **Presiding Official**.
  - Incorporates the **Board of Appeals Hearing Examiner (HE)** and outlines their authority.
  - Creates a **unified, comprehensive ROP** applicable to both the Board and HE.
  - Resolves conflicts with state and local codes regarding jurisdiction.
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## Rule 2.0 – Administrative Operations

- Updates organizational structure to align with the County Charter.
- Establishes a clear, **independent table of organization** for the Board.

- Removes the Department of Planning and Zoning (DPZ) from administrative oversight to prevent conflicts of interest.
  - Defines roles of all Board staff, ensuring **transparency and accountability**.
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### Rule 3.0 – Petition Process

- Implements a **formal docketing system** and public online access to downloadable/printable materials.
  - Provides clear, step-by-step guidance on petition handling.
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### Rule 4.0 – Public Notice

- Replaces outdated print newspaper requirements with **modern online advertising standards**.
  - Aligns notice practices with other county bodies.
  - Distinguishes between **posting** and **advertising** and improves compliance mechanisms.
  - Provides applicants access to required notice materials online.
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### Rule 5.0 – Meetings and Hearings

- Confirms all BOA matters are subject to **Board review in the first instance**.
  - Allows the Board to **delegate cases to the Hearing Examiner (HE)** for initial disposition in the same way cases are delegated by the Zoning Board and Board of License Commissioners.
  - Introduces procedures for **virtual meeting participation**.
  - Establishes standards for **meeting agendas, accommodation requests**, and regulated **party communications**.
  - Sets a transparent **case scheduling framework**.
  - Migrates **witness participation** tracking to an online format.
  - Aligns **continuance rules** with Circuit Court standards.
  - Introduces the requirement for **evidentiary hearings** in dual-jurisdiction matters.
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### Rule 6.0 – Cases

- Simplifies case categories and **standards of review** for public understanding.
  - Introduces standardized **case status definitions**.
  - Allows any party to **reactivate cases** from the inactive docket.
  - Defines attendance and **voting eligibility** standards for Board members and parties.
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### Rule 7.0 – Work Sessions

- Establishes **formal procedures** for Board work sessions for the first time.

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## Rule 8.0 – Ethical Service

- Sets enhanced **ethical standards** for Board members, exceeding current County requirements and aligning with national best practices.

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## Rule 10.0 – Evidence

- Defines procedures for **submitting technical reports** and qualifying **expert witnesses**.
- Enables the Board to seek **additional clarification** from witnesses post-presentation.

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## Rule 11.0 – Admission of Evidence

- Adopts **legally defensible standards** for accepting evidence and testimony into the official record.

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## Rule 13.0 – Appearances

- Clarifies **standing requirements** for parties.
- Specifies obligations for **attorneys appearing before the Board**.

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## Rule 14.0 – Subpoenas

- Clarifies subpoena procedures and provides **standard templates** and public online access.

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## Rules 15–17

- Modernizes and simplifies existing regulations to improve **public accessibility and understanding**.

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## Rule 18.0 – Decision and Order (D&O)

- Clarifies the **process and timeline** for Board decisions and orders.
- Provides for **dissenting and concurring opinions**.
- Requires public notice and **transparency** in D&O extensions, which must be requested by the Legal Advisor during a public meeting.
- (Refer to attached infographic for timeline.)

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## Rules 19–21

- Continues the effort to restate existing regulations in a **clearer, more accessible format**.

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### Rule 21.0 – Required Training

- Reinforces and expands **mandatory training** requirements found in state and local codes.

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### Rule 22.0 – Continuing Education

- Introduces a **robust education program** to ensure ongoing professional development and competency for Board members.

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### Rule 23.0 – Electronic Submissions

- Establishes a **modern online filing and case management system** to streamline operations and improve public access.

# DECISION AND ORDER SCHEDULING TIMELINE

