

Introduced	<u>07.07.2025</u>
Public Hearing	<u>07.21.2025</u>
Council Action	
Executive Action	
Effective Date	

County Council of Howard County, Maryland

2025 Legislative Session

Legislative Day No.

Bill No. 57-2025

Introduced by: David Yungmann at the request of the Board of Appeals

SHORT TITLE: Adoption – Updated Rules of Procedure for the Howard County Board of Appeals

AN ACT repealing and re-enacting Subtitle 2 “Rules of Procedure of the Board of Appeals” of Title 2 “Administrative Procedure” of the Howard County Code to revise the Rules of Procedure of the Board of Appeals; and generally relating to the Rules of Procedure.

Introduced and read first time July 7, 2025. Ordered posted and hearing scheduled.

By order Michelle Harrod
Michelle Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on July 21, 2025.

By order Michelle Harrod
Michelle Harrod, Administrator

This Bill was read the third time on _____, 2025 and Passed __, Passed with amendments __, Failed ____.

By order _____
Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this _____ day of _____, 2025 at ___ a.m./p.m.

By order _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2025

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

July 30, 2025 Tabbed Michelle Harrod

Expires Oct 20, 2025 Michelle Harrod

1 **WHEREAS**, Section 501(c) of the Howard County Charter authorizes the Howard

2 County Board of Appeals to adopt and amend rules of practice and procedure that govern its
3 proceedings; and

4

5 **WHEREAS**, Subtitle 2 of Title 2 “Administrative Procedures” of the Howard County

6 Code sets forth the current Rules of Procedure of the Board of Appeals; and

7

8 **WHEREAS**, the current Rules of Procedure were first adopted via the approval of
9 Council Bill No. 95-1989, and this proposed update of the Rules of Procedure would signify the
10 first comprehensive update of these Rules in over 35 years; and

11

12 **WHEREAS**, the Board of Appeals and their support staff have engaged in an extensive
13 review and drafting process of these proposed Rules of Procedure over a span of 14 months,
14 which included more than 35 meetings and over 275 hours;

15

16 **NOW, THEREFORE**,

17

18 *Section 1. Be It Enacted by the County Council of Howard County, Maryland, on*
19 *this _____ day of _____, 2025 that Subtitle 2 “Rules of Procedure for the Board of*
20 *Appeals” of Title 2 “Administrative Procedure” of the Howard County Code is repealed and re-*
21 *enacted to read as shown in the attached “Exhibit A” of this Act.*

EXHIBIT A

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

INTRODUCTION

THESE RULES OF PRACTICE AND PROCEDURE (THE RULES) HAVE BEEN ADOPTED BY THE
BOARD OF APPEALS UNDER AUTHORITY GRANTED BY THE HOWARD COUNTY CHARTER, SECTION
10-102. ADDITIONAL GUIDANCE MAY BE FOUND IN THE HOWARD COUNTY CHARTER, HOWARD
COUNTY CODE, AND THE HOWARD COUNTY ZONING REGULATIONS. THE BOARD OF APPEALS
REGULARLY REVIEW THE RULES TO ENSURE CURRENTNESS, ACCURACY AND COMPATIBILITY
WITH EXISTING REGULATIONS. THE REVIEW SHALL OCCUR DURING A PUBLIC MEETING HELD BY
MAY 15TH OF EACH CALENDAR YEAR.

THE BOARD OF APPEALS (THE BOARD) IS AN INDEPENDENT BOARD APPOINTED BY THE
CITY COUNCIL AND IS COMPOSED OF HOWARD COUNTY RESIDENTS WHO ARE REGISTERED
S. BOARD MEMBERS MUST COMPLY WITH SPECIFIC REQUIREMENTS AND STANDARDS
ODED IN THE HOWARD COUNTY EMPLOYEE MANUAL THAT PERTAIN TO EXECUTIVE EXEMPT
OFEES. THE HOWARD COUNTY EMPLOYEE MANUAL IS AVAILABLE ONLINE AT www.howardcountymd.gov.

FOR FURTHER INFORMATION AND ASSISTANCE, PARTIES MAY CONTACT THE BOARD'S
ADMINISTRATIVE OFFICES OR REVIEW THE BOARD OF APPEALS USER'S GUIDE, AVAILABLE ON THE
BOARD'S WEBSITE AT [HTTPS://CC.HOWARDCOUNTYMD.GOV/ZONING-LAND-USE/BOARD-APPEALS](https://cc.howardcountymd.gov/zoning-land-use/board-appeals).

APPLICABILITY

THESE RULES SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF MARYLAND AND THE LAWS OF HOWARD COUNTY AND SHALL APPLY TO THE BOARD OF APPEALS. UNLESS OTHERWISE SPECIFIED, THE TERM 'BOARD OF APPEALS' SHALL BE DEEMED TO INCLUDE THE BOARD OF APPEALS HEARING EXAMINER.

6 IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE PROVISION OF THESE
7 RULES AND THE TERMS OF ANY OTHER POLICY OR PROCEDURE, THE PROVISIONS OF THESE RULES
8 SHALL GOVERN. NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF ANY CONFLICT OR
9 INCONSISTENCY BETWEEN THESE RULES AND MARYLAND STATE LAW, THE HOWARD COUNTY
10 CHARTER, OR ANY APPLICABLE LOCAL HOWARD COUNTY LEGISLATION, THE LATTER SHALL
11 PREVAIL AND GOVERN.

12 IF RELEVANT GUIDANCE IS DEFINED ELSEWHERE IN HOWARD COUNTY POLICY OR
13 PROCEDURE, THOSE TERMS SHALL COMPLEMENT THESE RULES AND NOT BE CONSIDERED
14 PRESCRIPTIVE.

DEFINITIONS

17 TERMS USED IN THESE RULES SHALL HAVE THE DEFINITION PROVIDED IN ANY STANDARD
18 DICTIONARY UNLESS SPECIFICALLY DEFINED BELOW.

19 1) *ADMINISTRATIVE APPEAL.* APPEALS FROM ANY FINAL ORDER, DECISION, REQUIREMENT, OR
20 INTERPRETATION MADE BY AN ADMINISTRATIVE OFFICIAL IN THE ENFORCEMENT OF ANY
21 MATTER AUTHORIZED BY THE MARYLAND CODE, LAND USE, AND AS PROVIDED IN ZONING
22 REGULATIONS.

1 2) *ADMINISTRATIVE AGENCY*. A BOARD, COMMISSION, DEPARTMENT OR OTHER UNIT OF
2 COUNTY GOVERNMENT WHICH IS AUTHORIZED BY LAW TO MAKE RULES OR ADJUDICATE
3 CONTESTED CASES.

4 3) *AFFIDAVIT*. A WRITTEN STATEMENT, SIGNED UNDER PENALTIES OF PERJURY, AFFIRMING
5 THAT THE STATEMENTS IT CONTAINS ARE FACTUAL BASED UPON THE AFFIANT'S PERSONAL
6 KNOWLEDGE OR TO THE BEST OF THE AFFIANT'S KNOWLEDGE, INFORMATION, AND BELIEF.

7 4) *AGENCY*. A BOARD, COMMISSION, DEPARTMENT, OR OTHER UNIT OF COUNTY
8 GOVERNMENT AUTHORIZED BY LAW TO MAKE RULES OR ADJUDICATE CONTESTED CASES.

9 5) *APPEAL*. THE COMPLAINT TO A HIGHER TRIBUNAL OF AN ALLEGED INJUSTICE DONE OR
10 ERROR COMMITTED BY AN INFERIOR ONE, WHOSE JUDGMENT OR DECISION THE TRIBUNAL
11 ABOVE IS CALLED UPON TO CORRECT OR REVERSE.

12 6) *APPELLANT*. AN INDIVIDUAL OR ENTITY SEEKING REVIEW OF A LOWER AUTHORITY'S
13 DECISION.

14 7) *BASIS FOR DECISION*. FINDINGS SUPPORTED BY SUBSTANTIAL EVIDENCE AND COMPORTING
15 WITH DUE PROCESS. REQUIRES THAT THE AGENCY RECORD CONTAINS SUFFICIENT
16 RELEVANT EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT
17 THE AGENCY'S CONCLUSION. THE EVIDENCE MUST BE BOTH PROBATIVE AND RELIABLE TO
18 SATISFY THIS REASONABLENESS TEST.

19 8) *BOARD OF APPEALS ADMINISTRATIVE OFFICE*. THE PHYSICAL OFFICE SPACE WHERE THE
20 PUBLIC MAY REQUEST ASSISTANCE ON MATTERS WITHIN THE JURISDICTION OF THE BOARD
21 OF APPEALS. THE BOARD ADMINISTRATOR AND OTHER SUPPORT PERSONNEL STAFF THE
22 OFFICE.

1 9) *BOARD OF APPEALS ADMINISTRATOR.* AN INDIVIDUAL WHO MAINTAINS CASE FILES, MAKES
2 DOCKET ENTRIES, ISSUES PROCESSES, AND GENERALLY SERVES AS THE MINISTERIAL ARM OF
3 THE BOARD, AS FURTHER DEFINED WITHIN THIS SECTION.

4 10) *BOARD OF APPEALS ALTERNATE MEMBER.* A REGISTERED VOTER AND RESIDENT OF THE
5 COUNTY APPOINTED BY THE COUNCIL FROM A COUNTY-WIDE LIST OF APPLICANTS AS AN
6 AT-LARGE MEMBER. THE MEMBER SERVES IN A SUBSTITUTE CAPACITY TO HEAR AND
7 DECIDE CASES, AS NEEDED, AT THE REQUEST OF THE CHAIRPERSON AND ONLY DURING THE
8 ABSENCE OF A BOARD OF APPEALS REGULAR MEMBER. ALTERNATE MEMBERS SERVE A
9 TERM DEFINED BY LEGISLATION AND PERFORM THE DUTIES AS DETAILED ELSEWHERE IN
10 REGULATION.

11 11) *BOARD OF APPEALS LEGAL ADVISOR.* A LAWYER WHO PROVIDES THE BOARD WITH AN
12 INFORMED UNDERSTANDING OF THE BOARD'S LEGAL RIGHTS AND OBLIGATIONS AND
13 EXPLAINS THEIR PRACTICAL IMPLICATIONS. THE LEGAL ADVISOR ZEALOUSLY ASSERTS THE
14 BOARD'S POSITION UNDER THE RULES OF THE ADVERSARY SYSTEM AND ACTS AS AN
15 EVALUATOR BY EXAMINING THE BOARD'S LEGAL AFFAIRS AND REPORTING THEM TO THE
16 CLIENT OR TO OTHERS.

17 12) *BOARD OF APPEALS REGULAR MEMBER.* A REGISTERED VOTER AND RESIDENT OF HOWARD
18 COUNTY APPOINTED BY THE COUNTY COUNCIL TO SERVE FOR A TERM AS DEFINED BY
19 LEGISLATION. BOARD MEMBERS ARE ENTRUSTED TO HEAR AND DECIDE APPEALS FROM
20 DECISIONS MADE BY AN ADMINISTRATIVE OFFICER OR AGENCY; HEAR AND DECIDE
21 REQUESTS TO VARY A REGULATION OF THE ZONING ORDINANCE (VARIANCE); HEAR AND
22 DECIDE REQUESTS FOR CONDITIONAL USE APPROVAL; AND HEAR AND DECIDE A REQUEST TO
23 EXPAND A NONCONFORMING USE OR STRUCTURE.

1 13) *BUSINESS DAY*. ANY DAY THE BOARD OF APPEALS ADMINISTRATIVE OFFICE IS OPEN FOR
2 THE TRANSACTION OF PUBLIC BUSINESS.

3 14) *CASE IN CHIEF*. THE PORTION OF A HEARING WHEREBY THE PARTY WITH THE BURDEN OF
4 PROOF IN THE CASE PRESENTS ITS EVIDENCE. THE TERM DIFFERS FROM A REBUTTAL,
5 WHEREBY A PARTY SEEKS TO CONTRADICT THE OTHER PARTY'S EVIDENCE.

6 15) *CONCLUSIONS OF LAW*. A BRIEF EXPLANATION OF THE LEGAL PRINCIPLE THAT APPLIES TO
7 THE FACTS. AN ANALYSIS OF HOW THE LAW SUPPORTS THE FINDINGS OF FACT. DECISION
8 BASED ON LEGAL PRECEDENTS OR STATUTES.

9 16) *CONCURRING OPINION*. AN INDEPENDENT OPINION WRITTEN BY A BOARD MEMBER WHO
10 AGREES WITH THE MAJORITY OPINION BUT OFFERS ADDITIONAL COMMENT OR
11 CLARIFICATION.

12 17) *CONDITIONAL USE*. CERTAIN LAND USES WHICH ARE NOT PERMITTED AS A MATTER OF
13 RIGHT BUT MAY BE ALLOWED IF APPROVED BY THE BOARD OF APPEALS.

14 18) *CONTESTED CASE*. A PROCEEDING IN WHICH A PERSON'S LEGAL RIGHTS, DUTIES, OR
15 PRIVILEGES ARE REQUIRED BY LAW OR CONSTITUTIONAL RIGHT TO BE DETERMINED ONLY
16 AFTER AN OPPORTUNITY FOR A PUBLIC HEARING.

17 19) *DAY*. REFERRING TO A CALENDAR DAY UNLESS OTHERWISE INDICATED.

18 20) *DE NOVO OR DE NOVO HEARING*. A LATIN TERM THAT MEANS "ANEW," "FROM THE
19 BEGINNING," OR "AFRESH." AN APPEAL DURING WHICH NEW EVIDENCE MAY BE PRESENTED
20 AND NEW DETERMINATIONS MADE. NO WEIGHT IS GIVEN TO PRIOR FINDINGS OR
21 CONCLUSIONS. AN APPEAL IN WHICH A CASE IS COMPLETELY RETRIED.

22 21) *DISSENTING OPINION*: AN INDEPENDENT OPINION WRITTEN BY A BOARD MEMBER WHO
23 DISAGREES WITH THE MAJORITY OPINION.

1 22) *DOCKET*. A FORMAL ABRIDGED RECORD OF THE PROCEEDINGS. THE CASE FILE FOR A
2 MATTER BEFORE THE BOARD.

3 23) *DILATORY TACTICS*. INTENTIONAL ACTIONS TAKEN BY ONE PARTY TO CAUSE DELAYS OR
4 POSTPONE THE RESOLUTION OF A DISPUTED MATTER; STRATEGIES OFTEN EMPLOYED TO
5 CREATE STRESS AND HARDSHIP FOR THE OPPOSING PARTY AND TO GAIN AN UNFAIR
6 ADVANTAGE.

7 24) *EX PARTE*. BY AND FOR ONE SIDE ONLY; PARTISAN.

8 25) *FILED*. THE STATUS OF A DOCUMENT OR OTHER INSTRUMENT WHEN RECEIVED AND
9 ACCEPTED BY THE BOARD OF APPEALS ADMINISTRATIVE OFFICE. WHEN COMPUTING A
10 TIME FOR FILING A DOCUMENT, THE LAST DAY SHALL BE INCLUDED. IF THE LAST DAY FALLS
11 ON A SATURDAY, SUNDAY, A RECOGNIZED HOLIDAY, OR OTHER DAY ON WHICH THE OFFICE
12 IS NOT OPEN THE ENTIRE DAY, THE PERIOD RUNS UNTIL THE END OF THE NEXT DAY ON
13 WHICH THE OFFICE IS OPEN THE ENTIRE DAY DURING OFFICIAL BUSINESS HOURS

14 26) *IRRELEVANT*. TESTIMONY OR OTHER OFFERING NOT IMPORTANT OR PERTINENT TO THE
15 MATTER AT HAND OR AN ISSUE BEING CONSIDERED. SYNONYMOUS WITH IMMATERIAL.

16 27) *LEADING QUESTION*. A TYPE OF QUESTIONING THAT SUGGESTS THE ANSWER. IN GENERAL,
17 LEADING QUESTIONS ARE NOT ALLOWED DURING THE DIRECT EXAMINATION OF A WITNESS.

18 28) *LEGAL MEMORANDUM*. A WRITTEN SUMMARY OF A CASE SUBMITTED TO THE BOARD BY THE
19 PARTIES INVOLVED IN A CONTESTED MATTER. THIS MEMORANDUM IS ORDERED AT THE
20 DISCRETION OF THE PRESIDING OFFICIAL, WHO WILL ALSO ESTABLISH THE PAGE LIMIT AND
21 SUBMISSION DEADLINE. EACH MEMORANDUM MUST INCLUDE A BRIEF STATEMENT OF THE
22 QUESTIONS FOR REVIEW, PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW,

1 AND ANY RELIED-UPON EXHIBITS. NO NEW EVIDENCE OR EXHIBITS SHALL BE SUBMITTED
2 VIA THE LEGAL MEMORANDUM.

3 29) *LEGAL SUFFICIENCY REVIEW*. A FORMAL ANALYSIS CONDUCTED BY A LEGAL EXPERT TO
4 DETERMINE IF MATERIAL, SUBJECT TO REVIEW, COMPLIES WITH EXISTING LAWS,
5 CONSTITUTIONAL PRINCIPLES, AND LEGAL PRECEDENTS, ENSURING IT IS LEGALLY SOUND
6 AND ENFORCEABLE.

7 30) *MATTER*. ANY LITIGATION, ADMINISTRATIVE PROCEEDING, CLAIM OR ANY OTHER
8 REPRESENTATION, EXCEPT AS EXPRESSLY LIMITED IN A PARTICULAR RULE.

9 31) *MOTION*. A REQUEST TO THE BOARD SEEKING SPECIFIC ACTION IN A CASE. AN APPLICATION
10 TO THE BOARD OF APPEALS FOR AN ORDER SHALL BE MADE BY MOTION, WHICH, UNLESS
11 MADE DURING A HEARING, SHALL BE MADE IN WRITING AND SET FORTH THE RELIEF OR
12 ORDER SOUGHT.

13 32) *MAJORITY VOTE*. THREE-FIFTHS.

14 33) *ON THE RECORD APPEAL FILE*. THE COMPLETE CASE FILE AND A TRANSCRIPT OF ALL
15 PROCEEDINGS CONDUCTED BY THE LOWER REVIEWER.

16 34) *OPINION*. A WRITTEN EXPLANATION OR ANALYSIS OF THE REASONING BEHIND THE BOARD'S
17 DECISION, INCLUDING FINDINGS OF FACTS AND CONCLUSIONS OF LAW.

18 35) *ORDER*. A RULING OR MANDATORY DIRECTION OF THE BOARD, INCLUDING A COMMAND OF
19 THE PRESIDING OFFICIAL WHILE PERFORMING ADMINISTRATIVE PROCEDURES OR
20 CONDUCTING HEARING.

21 36) *PARTY*. A PERSON OR ENTITY NAMED OR PERMITTED TO PARTICIPATE IN A HEARING BEFORE
22 THE BOARD.

1 37) *PETITIONER*. A PERSON OR ENTITY REQUESTING THE BOARD'S REVIEW OF A MATTER BY
2 FILING A PETITION FOR APPEAL.

3 38) *PREPONDERANCE OF EVIDENCE STANDARD*. IF THE PROPOSITION IS MORE LIKELY TO BE TRUE
4 THAN NOT TRUE. THE STANDARD IS SATISFIED IF THERE IS A GREATER THAN FIFTY PERCENT
5 CHANCE THAT THE PROPOSITION IS TRUE.

6 39) *PROBATIVE*. INFORMATION RELEVANT TO AN ISSUE AND USEFUL TO PROVE OR DISPROVE A
7 FACT.

8 40) *PROFFER*. AN OFFER OF PROOF; A SUMMARY OFFER OF INFORMATION. DURING A HEARING,
9 A PARTY MAY PRESENT THE BOARD WITH AN ORAL SUMMARY OF WHAT THE EVIDENCE
10 WOULD HAVE SHOWN, OR WITNESS WOULD HAVE SAID, SO THE BOARD MAY DETERMINE
11 ADMISSIBILITY OR FOR OTHER PURPOSES. PROFFERS ARE MADE FOR THE SAKE OF
12 CONVENIENCE, SO THE BOARD DOES NOT HAVE TO LISTEN THROUGH LENGTHY EVIDENCE
13 DEEMED INADMISSIBLE OR INSIGNIFICANT. A PROFFER CAN BE A FIRST OFFER OR PROPOSAL.

14 41) *PUBLIC RECORD*. A RECORD MAINTAINED IN A GOVERNMENT OFFICE AVAILABLE FOR
15 INSPECTION BY THE PUBLIC.

16 42) *QUASI-JUDICIAL*. HAVING JUDICIAL CHARACTER DEFINED BY THE RIGHT TO HOLD HEARINGS
17 AND CONDUCT INVESTIGATIONS INTO DISPUTED CLAIMS AND ALLEGED INFRACTIONS OF
18 RULES AND REGULATIONS AND TO MAKE DECISIONS IN THE GENERAL MANNER OF COURTS.
19 MUCH LIKE IN A CIVIL OR CRIMINAL CASE, THE BOARD HEARS EVIDENCE AND DECIDES THE
20 FACTS.

21 43) *REBUTTAL*. EVIDENCE OR ARGUMENTS INTRODUCED TO COUNTER, DISPROVE, OR
22 CONTRADICT AN OPPONENT'S EVIDENCE OR ARGUMENT.

1 44) *RELIABILITY*. PERTAINS NOT TO RELEVANCY BUT RATHER TO CREDIBILITY AND WHETHER
2 THE EVIDENCE IS WORTHY OF BELIEF.

3 45) *REMOTE PROCEEDING*. ANY HEARING OR MEETING CONDUCTED IN WHOLE OR PART BY
4 TELEPHONE, VIDEO, OR OTHER AUDIO-VISUAL MEANS, OR BY A COMBINATION OF IN-
5 PERSON, AUDIO, AND AUDIO-VISUAL MEANS. ALSO REFERRED TO AS A VIRTUAL
6 PROCEEDING.

7 46) *SPECIAL EXCEPTION*: SEE CONDITIONAL USE

8 47) *SUBSTANTIAL EVIDENCE STANDARD*. MEANING MORE THAN A MERE SCINTILLA. REQUIRES
9 THAT THE AGENCY RECORD CONTAINS SUFFICIENT RELEVANT EVIDENCE THAT A
10 REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT THE AGENCY'S CONCLUSION.
11 SATISFYING THE REASONABLENESS TEST REQUIRES THE EVIDENCE TO BE BOTH PROBATIVE
12 AND RELIABLE. SUBSTANTIAL EVIDENCE IS A DEFERENTIAL STANDARD LOWER THAN
13 PREPONDERANCE OF THE EVIDENCE.

14 48) *SUBSTANTIVE AMENDMENT*. A MODIFICATION THAT HAS A SIGNIFICANT IMPACT AND RISES
15 ABOVE THAT OF A TECHNICAL ADJUSTMENT.

16 49) *TECHNICAL AMENDMENT*. ADJUSTMENTS TO A PLAN OR DOCUMENT THAT COMPLEMENT
17 EXISTING RESOURCES AND STRATEGIES. CONSIDERED LESS THAN SUBSTANTIVE IN NATURE.

18 50) *TIMELINESS*. AN ACTION COMPLETED WITHIN A PRESCRIBED TIME PERIOD SPECIFIED BY
19 RELEVANT LAW, REGULATION, OR OTHER ORDER.

20 51) *VARIANCE*. A DEVIATION FROM LAND USE AND DEVELOPMENT REGULATIONS.

21

RULE 1.0 ORGANIZATION

A. MEMBERS. THE COUNTY BOARD OF APPEALS SHALL CONSIST OF FIVE RESIDENTS WHO ARE REGISTERED VOTERS OF THE COUNTY AND APPOINTED BY THE COUNCIL. THE BOARD OF APPEALS MAY EXERCISE ITS AUTHORITY AND FUNCTION ONLY WHEN CONVENED AS A BOARD. APPOINTED MEMBERS HAVE NO AUTHORITY TO ACT INDIVIDUALLY WITHOUT DELEGATION OF AUTHORITY FROM THE BOARD. IT IS BOTH THE RIGHT AND THE RESPONSIBILITY OF EACH BOARD MEMBER TO MEANINGFULLY PARTICIPATE IN HEARINGS AND OTHER MEETINGS.

B. ALTERNATE MEMBERS. IF ONE REGULAR MEMBER OF THE BOARD OF APPEALS IS ABSENT, HAS A CONFLICT OF INTEREST, OR IS OTHERWISE UNABLE TO PARTICIPATE IN A HEARING, AN ALTERNATE MEMBER SHALL BE SELECTED FROM THE EXISTING POOL OF APPOINTED ALTERNATE MEMBERS TO TEMPORARILY SERVE IN THE REGULAR MEMBER'S ABSENCE. AN ALTERNATE MEMBER OF THE BOARD OF APPEALS SHALL BE A REGISTERED VOTER AND RESIDENT OF THE COUNTY AND SHALL BE APPOINTED BY THE COUNTY COUNCIL FROM A COUNTY-WIDE LIST OF APPLICANTS AS AN AT-LARGE MEMBER. WHENEVER POSSIBLE, THE ALTERNATE MEMBER SHALL BE OF THE SAME POLITICAL AFFILIATION AS THE ABSENT REGULAR MEMBER. THE ALTERNATE MEMBER SHALL SERVE A TERM AS DEFINED BY LEGISLATION. GIVEN THE SCOPE AND COMPLEXITY OF THE BOARD'S SUBJECT, THE COUNCIL SHALL CONSIDER COUNTY RESIDENTS WITH PRIOR HOWARD COUNTY BOARD OF APPEALS EXPERIENCE DURING THE ALTERNATE MEMBER SELECTION PROCESS.

C. ALTERNATE MEMBER POWERS AND FUNCTIONS. AN ALTERNATE MEMBER SHALL SERVE ON THE BOARD ONLY IN THE ABSENCE OF A PERMANENT MEMBER. AN ALTERNATE MEMBER SHALL MEET THE SAME QUALIFICATIONS AS A PERMANENT MEMBER, INCLUDING COMPLETION OF ALL REQUIRED TRAINING AND OTHER REQUIREMENTS OF THESE RULES OF PRACTICE AND

1 PROCEDURE. WHEN SERVING AS THE FIFTH BOARD MEMBER, THE ALTERNATE MEMBER SHALL
2 HAVE AND EXERCISE ALL THE POWERS AND DUTIES OF A REGULAR MEMBER OF THE BOARD
3 AND SHALL FULLY PARTICIPATE DURING INDIVIDUAL MATTERS BASED ON A REGULAR
4 MEMBER'S TEMPORARY ABSENCE.

5 1) AT THE REQUEST OF THE CHAIRPERSON, AN ALTERNATE MEMBER SHALL BE SELECTED
6 FROM AN EXISTING POOL OF THOSE CURRENTLY SERVING A TERM AS AN APPOINTED
7 ALTERNATE MEMBER AND SHALL ATTEND AND FULLY PARTICIPATE IN SPECIFIC
8 HEARINGS OR MEETINGS. IF ALL FIVE REGULAR MEMBERS ARE PRESENT, THE
9 ALTERNATE MEMBER SHALL NOT ATTEND OR BE PERMITTED TO PARTICIPATE IN
10 HEARINGS, WORK SESSIONS, OR OTHER PUBLIC MEETINGS BEFORE THE BOARD EXCEPT
11 FOR REQUIRED TRAINING AND EDUCATION EVENTS. AT NO TIME SHALL MORE THAN FIVE
12 BOARD MEMBERS PARTICIPATE AS THE BOARD OF APPEALS.

13 2) WHEN AN ALTERNATE MEMBER PARTICIPATES IN THE FIRST OR INITIAL DATE OF A
14 DOCKETED MATTER, THAT MEMBER SHALL CONTINUE TO FULLY PARTICIPATE DURING
15 ANY SUBSEQUENT CONTINUATION DATES THROUGH THE FINAL DISPOSITION OF THE
16 MATTER, AND THE REGULAR MEMBER SHALL REMAIN ABSENT.

17 3) ALL DOCKETED CASE HEARINGS REQUIRE A FULL BOARD OF FIVE MEMBERS TO
18 PARTICIPATE. AN ALTERNATE MEMBER SHALL TEMPORARILY FILL THE POSITION OF ONE
19 ABSENT REGULAR BOARD MEMBER. IF MORE THAN ONE REGULAR MEMBER IS ABSENT,
20 THE CHAIRPERSON SHALL POSTPONE THE MEETING.

21 4) BOARD MEMBERS WHO PARTICIPATE IN A CASE DURING THE INITIAL HEARING DATE
22 SHALL BE THE SAME MEMBERS TO HEAR AND DECIDE THE MATTER THROUGH FINAL
23 DISPOSITION.

1 D. PRESIDING OFFICERS. EACH JANUARY, THE FIVE REGULAR BOARD MEMBERS SHALL ELECT
2 ONE CHAIRPERSON AND ONE VICE-CHAIRPERSON BY MAJORITY VOTE DURING A PUBLIC
3 MEETING. THE VICE-CHAIRPERSON SHALL ASSUME THE CHAIRPERSON'S DUTIES IF THE
4 CHAIRPERSON IS ABSENT OR UNABLE TO SERVE. THE BOARD CHAIRPERSON AND VICE-
5 CHAIRPERSON SHALL BE RESPONSIBLE FOR THE BOARD'S COMPLIANCE WITH THE MARYLAND
6 OPEN MEETINGS ACT TRAINING REQUIREMENTS WHICH SHALL COMPLETE ALL REQUIRED
7 TRAINING PROVIDED BY STATE LAW WITHIN 14 DAYS OF THEIR ELECTION.

8 E. CHAIRPERSON RESPONSIBILITIES.

- 9 1) CONDUCT FULL, FAIR, AND IMPARTIAL HEARINGS AND MEETINGS;
- 10 2) SCHEDULE HEARINGS AND MEETINGS;
- 11 3) TAKE ACTION TO AVOID UNNECESSARY DELAYS IN THE DISPOSITION OF THE
12 PROCEEDINGS AND MAINTAIN ORDER;
- 13 4) ADMINISTER OATHS AND AFFIRMATIONS;
- 14 5) ISSUE SUBPOENAS FOR WITNESSES AND THE PRODUCTION OF EVIDENCE UPON THE
15 BOARD'S MOTION OR THE MOTION OF A PARTY;
- 16 6) RULE UPON OFFERS OF PROOF AND ADMIT RELEVANT AND MATERIAL EVIDENCE;
- 17 7) LIMIT UNDULY REPETITIOUS TESTIMONY AND REASONABLY LIMIT THE TIME FOR
18 PRESENTATIONS;
- 19 8) RULE ON SCHEDULING MATTERS, INCLUDING CONTINUANCES AND POSTPONEMENTS;
- 20 9) DIRECT PARTIES TO SUBMIT LEGAL MEMORANDA, PROPOSED FINDINGS OF FACT, AND
21 PROPOSED CONCLUSIONS OF LAW;

10) ISSUE SUCH ORDERS AS ARE NECESSARY TO PROCURE PROCEDURAL SIMPLICITY AND ADMINISTRATIVE FAIRNESS AND TO ELIMINATE UNJUSTIFIABLE EXPENSE AND DELAY;

AND

11) CONDUCT HEARINGS IN A MANNER SUITED TO ASCERTAIN THE FACTS AND SAFEGUARD THE RIGHTS OF THE PARTIES TO A HEARING.

F. HEARING EXAMINER. THE COUNTY COUNCIL MAY APPOINT HEARING EXAMINERS TO CONDUCT HEARINGS AND MAKE DECISIONS CONCERNING MATTERS WITHIN THE JURISDICTION OF THE BOARD OF APPEALS. DECISIONS OF AN EXAMINER MAY BE APPEALED TO THE BOARD OF APPEALS AS PROVIDED BY LAW. AN EXAMINER SHALL BE A MEMBER IN GOOD STANDING OF THE BAR OF THE MARYLAND COURT OF APPEALS AND, AT THE TIME OF APPOINTMENT, SHALL HAVE KNOWLEDGE OF ADMINISTRATIVE AND ZONING LAW, PRACTICE, AND PROCEDURE. WHILE HOLDING THE POSITION OF HEARING EXAMINER, THE HEARING EXAMINER MAY NOT REPRESENT ANY CLIENT INVOLVING LAND USE IN HOWARD COUNTY.

RULE 2.0 ADMINISTRATIVE OPERATIONS

A. HOURS OF OPERATION. THE BOARD OF APPEALS ADMINISTRATIVE OFFICES SHALL BE OPEN TO THE PUBLIC BY APPOINTMENT FROM AT LEAST 8:30 A.M. TO 4:30 P.M., MONDAY THROUGH FRIDAY OF EACH WEEK EXCEPT:

- 1) ON DAYS DESIGNATED UNDER COUNTY REGULATION FOR THE OBSERVANCE OF LEGAL HOLIDAYS BY COUNTY EMPLOYEES OR;
- 2) ON DAYS WHEN THE OFFICE IS CLOSED DUE TO EMERGENCY, INCLEMENT WEATHER, OR OTHER GOOD CAUSE BY ORDER OF THE CLERK OF THE BOARD OF APPEALS.

1 B. BOARD OF APPEALS CLERK; ROLES AND RESPONSIBILITIES. THE COUNTY COUNCIL

2 ADMINISTRATOR SHALL HAVE THE FOLLOWING ROLES AND RESPONSIBILITIES:

3 1) BE THE CLERK OF THE BOARD OF APPEALS AND THE TEMPORARY OFFICIAL CUSTODIAN OF

4 RECORDS FOR THE DURATION OF MATTERS DOCKETED WITH THE BOARD OF APPEALS.

5 2) FOR LAND USE ISSUES, ALL RECORDS AND DOCUMENTS HELD BY THE DEPARTMENT OF

6 PLANNING AND ZONING SHALL BE TRANSFERRED TO THE BOARD OF APPEALS CLERK

7 IMMEDIATELY UPON THE DOCKETING OF A PETITION. FOLLOWING THE ADJUDICATION OF A

8 DOCKETED MATTER, THE CLERK SHALL RETURN AND TRANSFER ALL RECORDS TO THE

9 DIRECTOR OF PLANNING AND ZONING, WHO SHALL RETAIN THE DOCUMENTS AS REQUIRED

10 AS THE PERMANENT CUSTODIAN OF RECORDS.

11 C. BOARD OF APPEALS ADMINISTRATOR; ROLES AND RESPONSIBILITIES. THE BOARD OF APPEALS

12 ADMINISTRATOR SHALL REPORT TO THE BOARD OF APPEALS CLERK AND SHALL:

13 1) BE THE OFFICIAL CUSTODIAN FOR BOARD MEMBERS' TRAINING AND COMPLIANCE

14 RECORDS;

15 2) ENSURE ALL HEARINGS AND MEETINGS OF THE BOARD ARE AUDIO AND VIDEO

16 RECORDED AND LIVE STREAMED WHEN APPLICABLE;

17 3) DRAFT AND MAINTAIN THE MINUTES OF BOARD MEETINGS;

18 4) ACCEPT PETITIONS, MOTIONS, AND CORRESPONDENCE TO THE BOARD;

19 5) HAVE LEAD ADMINISTRATIVE RESPONSIBILITY FOR PROVIDING PUBLIC NOTICE,

20 INCLUDING MEETING AGENDA DEVELOPMENT, AS REQUIRED FOR ALL HEARINGS AND

21 MEETINGS;

- 1 6) PREPARE A DRAFT AGENDA FOR THE CHAIRPERSON'S APPROVAL AS SOON AS
- 2 PRACTICABLE BEFORE PUBLIC POSTING;
- 3 7) MAINTAIN THE DOCKET IN EACH CASE;
- 4 8) DOCKET PETITIONS RECEIVED FOLLOWING THESE RULES AND ENSURE ONLY THE PROPER
- 5 FORMS ARE UTILIZED AND CONTAIN THE INFORMATION PRESCRIBED BY THE BOARD OF
- 6 APPEALS;
- 7 9) RECORD THE ACTIONS OF THE BOARD, AND DRAFT MEETING MINUTES FOR REVIEW AND
- 8 APPROVAL BY THE BOARD;
- 9 10) COORDINATE RESPONSES TO MOTIONS AS DIRECTED BY THE CHAIRPERSON AND
- 10 PREPARE BOARD ORDERS FOR THE CHAIRPERSON'S SIGNATURE;
- 11 11) AT THE DIRECTION OF THE CHAIRPERSON, CONDUCT AND RECORD ROLL CALL VOTES;
- 12 12) CREATE AND PRODUCE AGENDA ITEMS AND OTHER BOARD DOCUMENTS, MAKING SUCH
- 13 ARTICLES AVAILABLE TO BOARD MEMBERS NO LATER THAN 1 WEEK BEFORE A
- 14 SCHEDULED BOARD SESSION, WHENEVER PRACTICABLE;
- 15 13) RECEIVE AND DISSEMINATE DRAFT WRITTEN HEARING DECISIONS AND ORDERS FOR
- 16 BOARD MEMBER REVIEW, APPROVAL, AND PUBLIC POSTING;
- 17 14) MAINTAIN AN ACCURATE BOARD MEMBER ROSTER, INCLUDING EMAIL AND PHONE
- 18 NUMBER CONTACT INFORMATION. NO BOARD MEMBERS' PERSONAL CONTACT
- 19 INFORMATION SHALL BE PUBLICLY POSTED;
- 20 15) PREPARE AND SUBMIT A MONTHLY BOARD MEMBER ATTENDANCE REPORT TO THE
- 21 COUNCIL ADMINISTRATOR AND THE CHAIRPERSON BY THE 10TH DAY OF EACH MONTH.

1 THE REPORT SHALL LIST EACH MEMBER'S ABSENCES, VIRTUAL ATTENDANCE, AND IN-
2 PERSON ATTENDANCE DURING SCHEDULED SESSIONS FOR THE PRECEDING MONTH;
3 16) POST ALL HEARING AND MEETING-RELATED DOCUMENTS ONLINE FOR PUBLIC
4 CONSUMPTION ON THE BOARD OF APPEALS WEBSITE AS SOON AS POSSIBLE FOLLOWING
5 RECEIPT AS PRESCRIBED BY THESE RULES.

6 D. BOARD OF APPEALS ADMINISTRATIVE ASSISTANTS. THE BOARD OF APPEALS CLERK MAY ASSIGN
7 ADMINISTRATIVE ASSISTANTS WHO SHALL REPORT TO THE BOARD ADMINISTRATOR AND
8 PERFORM ADMINISTRATIVE DUTIES AS ASSIGNED BY THE BOARD THROUGH THE
9 ADMINISTRATOR.

10 E. LEGAL ADVISOR. THE BOARD'S LEGAL ADVISOR SHALL REPORT TO THE BOARD OF APPEALS
11 AND SHALL:

- 12 1) ATTEND ALL MEETINGS OF THE BOARD UNLESS EXCUSED BY THE CHAIRPERSON;
- 13 2) *IDENTIFY RELEVANT LEGAL ISSUES*. PROACTIVELY MONITOR LEGAL LANDSCAPES AND
14 IDENTIFY POTENTIAL LEGAL RISKS THAT COULD AFFECT THE BOARD'S OPERATION;
- 15 3) *PROVIDE CLEAR EXPLANATIONS*. EXPLAIN COMPLEX LEGAL CONCEPTS IN A WAY THAT IS
16 UNDERSTANDABLE TO BOARD MEMBERS WITHOUT A COMPREHENSIVE LEGAL
17 BACKGROUND;
- 18 4) *OFFER LEGAL ADVICE*. ADVISE THE BOARD ON APPROPRIATE LEGAL COURSES OF ACTION
19 BASED ON THEIR DECISION-MAKING NEEDS;
- 20 5) *REPORT ON COMPLIANCE STATUS*. KEEP THE BOARD UPDATED ON THE ORGANIZATION'S
21 COMPLIANCE WITH RELEVANT LAWS AND REGULATIONS;

1 6) *PRESENT LEGAL OPTIONS.* PRESENT DIFFERENT LEGAL OPTIONS AND POTENTIAL
2 CONSEQUENCES OF EACH OPTION TO THE BOARD FOR CONSIDERATION;

3 7) ASSIST ANY INDIVIDUAL BOARD MEMBER(S) DESIRING TO PUBLISH AN INDEPENDENT,
4 CONCURRENT, OR MINORITY OPINION. ANY OPINION(S) SHALL BE INCORPORATED AS PART
5 OF THE BOARD'S FINAL DECISION AND ORDER;

6 8) OBTAIN THE BOARD'S GUIDANCE PRIOR TO AND WHILE REPRESENTING THE BOARD BEFORE
7 ANY COURT OF LAW. PROVIDE THE BOARD WITH REGULAR LEGAL UPDATES ON ANY
8 MATTERS ADJUDICATED BY THE BOARD AND SUBSEQUENTLY APPEALED TO A COURT OF
9 LAW. PROVIDE THE BOARD WITH ANY DOCUMENTS SUBMITTED BY A PARTY DURING
10 PROCEEDINGS IN A COURT OF LAW DURING A CASE IN WHICH THE BOARD IS NAMED AS A
11 PARTY; AND

12 9) PROVIDE BOARD OF APPEALS MEMBERS WITH A MEMORANDUM OF LAW FOR EACH
13 DOCKETED MATTER NO LATER THAN 5 DAYS BEFORE THE SCHEDULED INITIAL HEARING
14 DATE.

15 a) THE CONFIDENTIAL MEMORANDUM SHALL CONTAIN RELEVANT POINTS OF LAW,
16 PERTINENT PUBLISHED LEGAL OPINIONS AND PRIOR BOARD DECISIONS, A SUMMARY OF
17 PRELIMINARY LEGAL ISSUES FOR THE BOARD'S CONSIDERATION, AND STANDARDS OF
18 EVALUATION FOR THE BOARD TO CONTEMPLATE WHEN DETERMINING FINDINGS OF
19 FACT AND CONCLUSIONS OF LAW.

20 b) THE BOARD MAY ALSO REQUEST THAT COUNSEL PROVIDE A SIMILAR LEGAL
21 MEMORANDUM BEFORE DELIBERATION.

22

RULE 3.0 PETITION PROCESS

FORM AND CONTENTS OF PETITIONS. THE BOARD OF APPEALS SHALL PRESCRIBE THE FORM AND CONTENTS OF PETITIONS TO BE USED BY THE BOARD OF APPEALS AND THE HEARING EXAMINER AND SHALL BE THE ONLY PETITION FORMS USED. EACH CORRECTLY FILED PETITION SHALL RECEIVE A UNIQUE DOCKETING NUMBER FORMATTED AS REQUIRED BY THESE RULES. THE ONLY APPROVED PETITION FORM(S) TO BE USED BY AN APPELLANT CAN BE FOUND ONLINE ON THE BOARD'S WEBSITE AT [HTTPS://CC.HOWARDCOUNTYMD.GOV/ZONING-LAND-USE/BOARD-APPEALS](https://cc.howardcountymd.gov/zoning-land-use/board-appeals). NO OTHER FORM SHALL BE ACCEPTED.

B. ACCURACY. THE PETITIONER SHALL ENSURE THE ACCURACY AND COMPLETENESS OF THE INFORMATION REQUIRED IN THE PETITION BEFORE SUBMISSION. A COMPLETED PETITION SHALL BE FILED IN PERSON WITH THE BOARD ADMINISTRATOR OR ONLINE WHEN AVAILABLE. ABSENT PRIOR WRITTEN AUTHORIZATION FROM THE CHAIRPERSON, ALL FORMS OR OTHER DOCUMENTS RELATED TO A DOCKETED MATTER SHALL BE SUBMITTED FOR THE BOARD'S CONSIDERATION IN THE SAME MANNER AS THE ORIGINAL PETITION.

C. SUBMISSION. PETITIONS THAT ARE INCOMPLETE OR INCORRECT WILL NOT BE DOCKETED. SUBMITTING AN INACCURATE OR INCOMPLETE PETITION DOES NOT EXTEND THE FILING DEADLINE REQUIREMENTS. IT IS THE SOLE RESPONSIBILITY OF THE PETITIONER TO ENSURE THEIR CASE IS FILED ON TIME.

D. NOTIFICATION REQUIRED. DURING THE PENDENCY OF A MATTER, A PARTY MUST NOTIFY THE BOARD ADMINISTRATOR OF A CHANGE IN THE PARTY'S MAILING ADDRESS, EMAIL ADDRESS, AND PHONE NUMBER.

E. *AMENDMENTS TO A PETITION.*

- 1 1) AMENDMENTS TO A DOCKETED PETITION SHALL BE MADE ONLY DURING A PUBLIC HEARING.
- 2 2) THE BOARD MAY CONTINUE, SUSPEND, OR POSTPONE A HEARING IN RESPONSE TO A
- 3 PROPOSED AMENDMENT.
- 4 3) THE BOARD MAY ORDER THAT AN AMENDED PETITION BE REMANDED TO THE PRIOR
- 5 REVIEWING AGENCY OR MAY REQUEST ADDITIONAL AGENCY REVIEW AS NEEDED.
- 6 4) A MAJORITY VOTE SHALL DECIDE ANY BOARD ACTION BASED ON PETITION AMENDMENTS.

7 F. PAYMENT OF FEES. AT THE TIME OF FILING, THE PETITIONER SHALL PAY THE REQUIRED FEES
8 PER THE CURRENT SCHEDULE OF FEES ADOPTED BY RESOLUTION OF THE COUNTY COUNCIL.

9 G. REFUND OF FEES. IF THE BOARD OF APPEALS REVERSES THE DECISION OF AN ADMINISTRATIVE
10 AGENCY AFTER AN APPEAL HEARING, THEN THE BOARD SHALL ORDER THE DIRECTOR OF
11 FINANCE TO REFUND ALL ADMINISTRATIVE HEARING AND FILING FEES UPON REQUEST BY THE
12 PETITIONER.

- 13 1) A REQUEST FOR FEES TO BE REFUNDED MAY BE MADE AT ANY TIME; HOWEVER, THE
14 REQUEST MUST BE SUBMITTED NO LATER THAN 7 DAYS AFTER THE CONCLUSION OF THE
15 BOARD'S DELIBERATION. A REQUEST MAY BE SUBMITTED VERBALLY DURING A PUBLIC
16 HEARING OR IN WRITING AS DETAILED IN THESE RULES.
- 17 2) NO REQUEST SHALL BE CONSIDERED IF RECEIVED FOLLOWING THE ISSUANCE OF THE
18 BOARD'S FINAL WRITTEN DECISION AND ORDER.

19 H. SCHEDULING. WHEN CORRECTLY SUBMITTED, EACH APPEAL PETITION WILL BE DOCKETED BY
20 THE BOARD ADMINISTRATOR AND POSTED ON THE ONLINE PUBLIC CALENDAR FOR THE BOARD
21 OF APPEALS. THE BOARD ADMINISTRATOR SHALL NOTIFY THE CHAIRPERSON OF ANY NEWLY
22 DOCKETED CASE WITHIN 2 BUSINESS DAYS FOLLOWING RECEIPT OF A COMPLETED PETITION BY

1 THE ADMINISTRATOR. THE BOARD ADMINISTRATOR SHALL PROVIDE ALL RELATED CASE
2 MATERIALS TO THE CHAIRPERSON SO THE ANTICIPATED COMPLEXITY OF THE MATTER MAY BE
3 ASSESSED FOR SCHEDULING PURPOSES.

4 1) THE CHAIRPERSON WILL SCHEDULE THE MATTER WITHIN 2 BUSINESS DAYS OF
5 NOTIFICATION AND DIRECT THE BOARD ADMINISTRATOR TO PREPARE A SCHEDULING
6 ORDER FOR THE CHAIRPERSON'S SIGNATURE AND ISSUANCE.

7 2) APPEALS SHALL BE HEARD IN ORDER OF THEIR SUBMISSION. HOWEVER, THE BOARD MAY
8 REARRANGE THE SEQUENCE OF CASES FOR EFFICIENCY AS NECESSARY.

9 3) THE BOARD ADMINISTRATOR SHALL SERVE EACH PARTY WITH A SCHEDULING ORDER
10 WITHIN 2 BUSINESS DAYS OF THE ORDER BEING SIGNED BY THE CHAIRPERSON. THE
11 ADMINISTRATOR MAY PERFECT THE SERVICE OF ANY BOARD ORDER VIA EMAIL.

12 4) EACH SCHEDULING ORDER SHALL STATE THE DATE, TIME, AND LOCATION THAT A NAMED
13 PARTY MUST APPEAR BEFORE THE BOARD. WHENEVER PRACTICAL, THE INITIAL
14 SCHEDULING ORDER SHALL BE ISSUED AT LEAST 37 DAYS BEFORE THE INITIAL HEARING
15 DATE.

16 5) ALL MATERIALS RELATED TO A DOCKETED CASE SHALL BE DIGITALLY UPLOADED WITH A
17 TIME STAMP TO THE BOARD OF APPEALS PUBLIC WEBSITE BY THE ADMINISTRATOR WHEN
18 THE SCHEDULING ORDER IS ISSUED.

19

20 **RULE 4.0. PUBLIC NOTICE**

21 A. ADVERTISING.

1 1) THE BOARD ADMINISTRATOR SHALL POST A HEARING NOTICE ON THE BOARD OF APPEALS
2 WEBSITE AND THE BOARD'S NOTICE BOARD IN THE GEORGE HOWARD BUILDING. THE
3 HEARING NOTICE SHALL INCLUDE THE SAME INFORMATION AS THE NOTICE POSTED ON THE
4 PROPERTY BY THE PETITIONER.

5 2) FOR VARIANCES IN RESIDENTIAL DISTRICTS, THE NOTICE SHALL BE POSTED AT LEAST 15
6 CONSECUTIVE DAYS BEFORE THE INITIAL HEARING.

7 3) FOR ALL OTHER PETITIONS, THE NOTICE SHALL BE POSTED FOR AT LEAST 30 CONSECUTIVE
8 DAYS BEFORE THE SCHEDULED INITIAL HEARING.

9 4) FOR 60 DAYS FOLLOWING THE ENACTMENT OF THESE RULES BY THE COUNTY COUNCIL, THE
10 BOARD ADMINISTRATOR SHALL PROVIDE WEEKLY NOTICE IN AT LEAST TWO NEWSPAPERS OF
11 GENERAL CIRCULATION IN HOWARD COUNTY. THE NEWSPAPER ADVERTISEMENT SHALL
12 INFORM READERS THAT ALL PUBLIC NOTICES FOR BOARD OF APPEALS MATTERS CAN BE
13 FOUND ONLINE AT THE BOARD OF APPEALS WEBSITE. NO FURTHER NEWSPAPER
14 ADVERTISING SHALL BE REQUIRED BY ANY PARTY FOLLOWING THE 60-DAY PERIOD.

15

16 B. SIGNAGE POSTING.

17 1) EXCEPT IN ADMINISTRATIVE APPEALS FROM A NOTICE OF VIOLATION OF COUNTY LAWS OR
18 REGULATIONS, THE PROPERTY INVOLVED SHALL BE POSTED WITH THE TIME, DATE, AND
19 PLACE OF THE INITIAL HEARING. THE SIGN SHALL INCLUDE THE WEBSITE ADDRESSES FOR THE
20 DEPARTMENT OF PLANNING AND ZONING AND THE BOARD OF APPEALS.

1 a) FOR VARIANCES IN RESIDENTIAL DISTRICTS, THE PROPERTY SHALL BE POSTED FOR AT
2 LEAST 15 DAYS CONSECUTIVELY IMMEDIATELY BEFORE THE SCHEDULED INITIAL
3 HEARING DATE.

4 b) FOR ALL OTHER PETITIONS, THE PROPERTY SHALL BE POSTED FOR AT LEAST 30 DAYS
5 CONSECUTIVELY IMMEDIATELY BEFORE THE SCHEDULED INITIAL HEARING DATE.

6 c) IF A WEATHER-RELATED EVENT, VANDALISM, OR OTHER UNEXPECTED DISRUPTION
7 PREVENTS THE CONTINUOUS DISPLAY OF THE POSTING, THEN THE PETITIONER MUST
8 IMMEDIATELY NOTIFY THE BOARD OF APPEALS AND REPOST THE PROPERTY AS SOON AS
9 PRACTICAL.

10 d) IN ALL CASES, THE PETITIONER SHALL REMOVE POSTING SIGNAGE WITHIN 15 DAYS
11 FOLLOWING THE CONCLUSION OF THE HEARING.

12 C. SIGNAGE POSTERS. THE DEPARTMENT OF PLANNING AND ZONING SHALL DETERMINE THE
13 NUMBER OF POSTERS REQUIRED AND THEIR LOCATION.

14 1) THE PETITIONER SHALL BEAR THE EXPENSE OF POSTING.
15 2) THE SIGN POSTERS SHALL BE ERECTED BY THE PETITIONER PERPENDICULAR TO THE ROAD
16 WHICH SERVES AS THE MAILING ADDRESS OF THE SUBJECT PROPERTY.

17 3) THE DEPARTMENT OF PLANNING AND ZONING SHALL CREATE THE REQUIRED POSTERS WITH
18 WRITTEN INSTRUCTIONS FOR PLACEMENT WITHIN 2 DAYS OF THE MATTER BEING DOCKETED
19 BY THE BOARD ADMINISTRATOR.

20 4) SIGNS AND INSTRUCTIONS FOR PLACEMENT SHALL BE PICKED UP BY THE PETITIONER, BY
21 APPOINTMENT, FROM THE BOARD OF APPEALS ADMINISTRATIVE OFFICES.

1 D. AFFIDAVIT OF POSTING. THE BOARD OF APPEALS SHALL PRESCRIBE THE FORM AND CONTENTS
2 OF THE AFFIDAVIT OF POSTING TO BE USED BY THE BOARD OF APPEALS.

3 1) AT THE TIME OF THE INITIAL HEARING, THE APPELLANT SHALL SIGN THE REQUIRED
4 AFFIDAVIT STATING THAT THE SIGN WAS POSTED AS REQUIRED. THE AFFIDAVIT SHALL BE
5 ENTERED INTO THE OFFICIAL RECORD AS A PRELIMINARY MATTER ON THE INITIAL HEARING
6 DAY.

7 2) THE APPELLANT SHALL PROVIDE A PRINTED PHOTO OF EACH SIGN INSTALLED AS DIRECTED,
8 AND THE IMAGE(S) SHALL BE ATTACHED TO THE AFFIDAVIT.

9 3) THE PETITIONER SHALL PROVIDE THE BOARD ADMINISTRATOR WITH TWO COPIES OF THE
10 REQUIRED AFFIDAVIT WITH ORIGINAL SIGNATURE(S).

11 4) THE REQUIRED AFFIDAVIT OF POSTING CAN BE ACCESSED ONLINE AT THE BOARD'S WEBSITE
12 AT [HTTPS://CC.HOWARDCOUNTYMD.GOV/ZONING-LAND-USE/BOARD-APPEALS](https://cc.howardcountymd.gov/zoning-land-use/board-appeals).

13 E. POSTING FOR OTHER ADMINISTRATIVE APPEALS HEARD DE NOVO. IF A PETITIONER CANNOT POST
14 A PROPERTY BECAUSE THE PETITIONER DOES NOT OWN THE PROPERTY, THE PETITIONER SHALL
15 SEND A COPY OF THE PETITION AND WRITTEN NOTIFICATION OF THE PLACE, TIME, AND DATE OF
16 THE HEARING TO THE PROPERTY OWNER.

17 1) THE PETITIONER SHALL FILE AN AFFIDAVIT OF WRITTEN NOTIFICATION WITH THE BOARD
18 ADMINISTRATOR.

19 2) AT THE TIME OF THE INITIAL HEARING, THE AFFIDAVIT SHALL BE ENTERED INTO THE
20 OFFICIAL RECORD AS A PRELIMINARY MATTER.

1 3) THE REQUIRED AFFIDAVIT OF WRITTEN NOTIFICATION CAN BE ACCESSED ONLINE AT THE
2 BOARD'S WEBSITE AT [HTTPS://CC.HOWARDCOUNTYMD.GOV/ZONING-LAND-USE/BOARD-](https://cc.howardcountymd.gov/zoning-land-use/board-)
3 APPEALS.

4 F. POSTING FOR CLARIFICATION OR REVOCATION OF A CONDITIONAL USE WHEN THE DEPARTMENT OF
5 PLANNING AND ZONING IS THE PETITIONER. THE DEPARTMENT OF PLANNING AND ZONING SHALL
6 TAKE THE FOLLOWING ACTIONS.

7 1) SEND WRITTEN NOTIFICATION OF THE PLACE, TIME, AND DATE OF THE INITIAL HEARING TO
8 THE ADJOINING AND CONFRONTING PROPERTY OWNERS AND;

9 2) ATTEMPT TO POST THE PROPERTY WITH SIGNS AS REQUIRED.

10 3) AT THE TIME OF THE INITIAL HEARING, THE DIRECTOR OF THE DEPARTMENT OF PLANNING
11 AND ZONING SHALL SIGN THE REQUIRED AFFIDAVIT OF POSTING AS REQUIRED AND AT THE
12 TIME OF THE INITIAL HEARING, THE AFFIDAVIT SHALL BE ENTERED INTO THE OFFICIAL
13 RECORD AS A PRELIMINARY MATTER.

14 4) THE DIRECTOR OF THE DEPARTMENT OF PLANNING AND ZONING SHALL FILE AN AFFIDAVIT
15 OF WRITTEN NOTIFICATION WITH THE BOARD ADMINISTRATOR AND AT THE TIME OF THE
16 INITIAL HEARING, THE AFFIDAVIT SHALL BE ENTERED INTO THE OFFICIAL RECORD AS A
17 PRELIMINARY MATTER.

18 G. COMPLIANCE WITH POSTING REQUIREMENTS. IF ANY QUESTION ARISES REGARDING COMPLIANCE,
19 THE PETITIONER MUST PROVE COMPLIANCE.

20 1) IF THE BOARD DETERMINES THAT THE PETITIONER HAS SUBSTANTIALLY COMPLIED WITH THE
21 PUBLIC NOTICE REQUIREMENT, THE BOARD SHALL PROCEED WITH THE HEARING.

1 2) IF THE BOARD DETERMINES THAT THE PETITIONER HAS MADE A GOOD FAITH EFFORT TO
2 COMPLY WITH THE POSTING REQUIREMENTS, THE BOARD MAY GRANT THE PETITIONER A
3 REASONABLE OPPORTUNITY TO CORRECT THE NONCOMPLIANCE.

4 3) IF THE BOARD DETERMINES THAT THE PETITIONER HAS NOT MADE A GOOD FAITH EFFORT TO
5 COMPLY WITH THE POSTING REQUIREMENTS, THE BOARD SHALL DISMISS THE PETITION.

6

7 **RULE 5.0. MEETINGS AND HEARINGS**

8 A. *CASES.* EXCEPT AS PROVIDED IN SUBSECTIONS (1) AND (2), WHEREVER IN THIS CODE OR THE
9 ZONING REGULATIONS A MATTER IS AUTHORIZED TO BE HEARD AND DECIDED BY THE BOARD OF
10 APPEALS, THE MATTER MAY FIRST BE HEARD AND DECIDED BY A HEARING EXAMINER;
11 HOWEVER, IN ALL MATTERS, THE BOARD SHALL HAVE THE DISCRETION TO SELECT AND HEAR
12 CASES TO ENSURE TIMELY AND FAIR CASE RESOLUTION WHILE MINIMIZING DELAYS AND
13 UNNECESSARY EXPENDITURES

14 1) WHEREVER IN THIS CODE OR THE ZONING REGULATIONS A PERSON IS AUTHORIZED TO
15 APPEAL A DECISION MADE BY AN ADMINISTRATIVE AGENCY AFTER AN OPPORTUNITY FOR A
16 CONTESTED CASE HEARING, THE APPEAL WILL BE HEARD AND DECIDED BY THE BOARD.

17 2) THE BOARD WILL HEAR AND DECIDE A CASE IF THE BOARD DETERMINES THAT THE HEARING
18 EXAMINER IS UNABLE TO HEAR THE CASE BECAUSE OF A CONFLICT OF INTEREST OR OTHER
19 DISQUALIFICATION.

20 B. *QUORUM.* A MAJORITY OF THE BOARD OF APPEALS (THREE OR MORE MEMBERS) CONSTITUTES A
21 QUORUM. A QUORUM SHALL BE PRESENT DURING THE ENTIRETY OF ANY BOARD MEETING OR
22 HEARING.

1) BOARD MEMBERS WHO PARTICIPATE IN MEETINGS VIRTUALLY SHALL HAVE THEIR CAMERAS ON AND BE VISIBLE AT ALL TIMES WHEN PRACTICABLE WHILE THE MEETING IS IN SESSION.

2) WHEN ANY BOARD MEMBER OR OTHER PARTY TO A HEARING PARTICIPATES VIRTUALLY, THE PRESIDING OFFICIAL SHALL CONDUCT A PRELIMINARY ROLL CALL TO ENSURE ALL PARTICIPANTS HAVE WORKING AUDIO AND VIDEO TECHNOLOGY.

C. SCHEDULED BY CHAIRPERSON. THE BOARD OF APPEALS SHALL HOLD MEETINGS AS SCHEDULED BY THE CHAIRPERSON, INCLUDING PRELIMINARY HEARINGS WHEN THE CHAIRPERSON DEEMS THEM NECESSARY.

D. OPEN TO THE PUBLIC. THE PUBLIC IS ALLOWED TO ATTEND AND OBSERVE ANY OPEN SESSION OF THE BOARD OF APPEALS. EXCEPT WHEN AUTHORIZED BY LAW OR WHEN THE PRESIDING OFFICIAL EXPRESSLY INVITES PUBLIC TESTIMONY, QUESTIONS, COMMENTS, OR OTHER FORMS OF PUBLIC PARTICIPATION, NO MEMBER OF THE PUBLIC MAY PARTICIPATE.

E. AGENDA. A MEETING AGENDA SHALL BE MADE AVAILABLE TO THE PUBLIC AS SOON AS THE MEETING DATE AND TIME HAVE BEEN ESTABLISHED, THE TOPICS OF THE MEETING ARE KNOWN, AND THE DOCUMENT HAS BEEN APPROVED FOR PUBLICATION BY THE CHAIRPERSON. IN ALL CASES, MEETING AGENDAS SHALL BE MADE AVAILABLE AT LEAST 24 HOURS BEFORE A BOARD MEETING.

F. ACCOMMODATION. UPON WRITTEN REQUEST OF A PARTY, WITNESS, OR REPRESENTATIVE WHO CANNOT HEAR, SPEAK, OR UNDERSTAND THE SPOKEN OR WRITTEN ENGLISH LANGUAGE, THE BOARD SHALL PROVIDE A QUALIFIED INTERPRETER DURING ANY PROCEEDING IN WHICH THE PARTY, WITNESS, OR REPRESENTATIVE IS PARTICIPATING. AN INTERPRETER SHALL TAKE AN OATH OR AFFIRMATION THAT THE INTERPRETER WILL ACCURATELY INTERPRET THE

1 PROCEEDINGS. IF A PARTY, WITNESS, OR REPRESENTATIVE REQUESTS OTHER ACCOMMODATION,
2 THE BOARD SHALL PROVIDE REASONABLE ACCOMMODATION AS REQUIRED BY LAW.

3 G. *DISRUPTIVE CONDUCT.* A PERSON ATTENDING AN OPEN PUBLIC MEETING MAY NOT ENGAGE IN
4 ANY CONDUCT, INCLUDING VISUAL DEMONSTRATIONS SUCH AS THE WAVING OF PLACARDS,
5 SIGNS, OR BANNERS, THAT DISRUPT THE SESSION OR INTERFERE WITH THE RIGHT OF MEMBERS OF
6 THE PUBLIC TO ATTEND AND OBSERVE THE SESSION. THE PRESIDING OFFICIAL MAY CLEAR THE
7 ROOM OF DISRUPTIVE INDIVIDUALS OR RECESS THE MEETING OR HEARING WHILE ORDER IS
8 RESTORED.

9 H. *RECORDING, PHOTOGRAPHING, AND BROADCASTING OF OPEN SESSION.* A MEMBER OF THE
10 PUBLIC, INCLUDING ANY REPRESENTATIVE OF THE NEWS MEDIA, MAY RECORD DISCUSSIONS AT
11 AN OPEN MEETING IF THE RECORDING DEVICE DOES NOT DISTURB PEOPLE OBSERVING OR
12 PARTICIPATING IN THE SESSION. THE PRESIDING OFFICER MAY RESTRICT THE MOVEMENT OF A
13 PERSON USING A RECORDING DEVICE IF SUCH RESTRICTION IS NECESSARY TO MAINTAIN THE
14 ORDERLY CONDUCT OF THE SESSION.

15 I. *RECORDING NOT PART OF RECORD.* A RECORDING OF AN OPEN PUBLIC SESSION MADE BY A
16 MEMBER OF THE PUBLIC, OR ANY TRANSCRIPT DERIVED FROM SUCH A RECORDING, SHALL NOT
17 BE DEEMED A PART OF THE RECORD OF ANY PROCEEDINGS.

18 J. *OPEN HEARINGS.* EVIDENCE SHALL BE PRESENTED TO THE BOARD OF APPEALS ONLY IN
19 HEARINGS OPEN TO THE PUBLIC. NO BOARD OF APPEALS MEMBER OR THEIR STAFF SHALL
20 COMMUNICATE WITH ANYONE OTHER THAN THE BOARD'S LEGAL ADVISOR, ADMINISTRATIVE
21 STAFF, OR A BOARD MEMBER REGARDING THE MERITS OF A CASE BEFORE ISSUING THE FINAL
22 WRITTEN DECISION AND ORDER.

1 K. EX PARTE PROHIBITED. ALL COMMUNICATION BETWEEN INTERESTED PARTIES AND THE BOARD
2 OF APPEALS REGARDING ANY SPECIFIC ASPECT OF A DOCKETED MATTER MUST BE IN WRITING
3 AND SUBMITTED AS A MOTION TO THE BOARD ADMINISTRATOR UNLESS OTHERWISE NOTED. IF A
4 RESPONSE IS REQUIRED, IT WILL BE PROVIDED IN WRITING.

5 L. PLACE AND TIME OF HEARINGS AND MEETINGS. THE BOARD OF APPEALS HEARINGS AND
6 MEETINGS SHALL BE HELD IN THE GEORGE HOWARD BUILDING, ELLICOTT CITY, MARYLAND,
7 UNLESS THE CHAIRPERSON SCHEDULES OTHERWISE. THE BOARD OF APPEALS MEETS UP TO ONCE
8 A WEEK. THE HEARING EXAMINER SHALL BE RESPONSIBLE FOR SCHEDULING THEIR CASES.

9 1) GENERALLY, MEETINGS ALTERNATE BETWEEN DAYTIME SESSIONS (UP TO 8 HOURS) AND
10 EVENING SESSIONS (UP TO 4 HOURS).

11 2) QUARTERLY MEETINGS, WHEN NEEDED, ARE DEDICATED TO BOARD MEMBERS' CONTINUING
12 EDUCATION (1-1.5 HOURS) AND MAY BE PART OF AN EVENING, DAY, OR STAND-ALONE
13 SESSION.

14 3) WHEN NEEDED, WORK SESSIONS MAY BE SCHEDULED TO ADDRESS ADMINISTRATIVE
15 MATTERS UNRELATED TO A PARTICULAR CASE.

16 M. WITNESS PARTICIPATION. ANY MEMBER OF THE PUBLIC MAY REQUEST TO TESTIFY AT ANY
17 MEETING DURING WHICH THE BOARD ACCEPTS TESTIMONY.

18 1) INDIVIDUALS WISHING TO TESTIFY SHALL SIGN UP ONLINE AT THE BOARD OF APPEALS
19 WEBSITE BEFORE OR ON THE DAY OF A MEETING OR HEARING.

20 2) MEMBERS OF THE PUBLIC WHO APPEAR IN PERSON AND WISH TO TESTIFY BUT DID NOT SIGN
21 UP ONLINE IN ADVANCE SHALL USE THE PUBLIC ACCESS COMPUTER IN THE HEARING ROOM
22 TO COMPLETE THE ONLINE SIGN-UP REGISTRATION PROCESS.

1 3) ANY PERSON WISHING TO TESTIFY IN OPPOSITION TO A DOCKETED PETITION MUST SIGN UP TO
2 DO SO BEFORE THE END OF THE APPELLANT'S CASE, AFTER WHICH PUBLIC TESTIMONY
3 REGISTRATION WILL BE CLOSED.

4 N. CONTINUANCES. HEARINGS THAT ARE CONTINUED AT THE CONCLUSION OF A SESSION SHALL
5 HAVE THE DAY AND TIME OF ANY SUBSEQUENT SESSION ANNOUNCED BY THE PRESIDING
6 OFFICIAL IMMEDIATELY BEFORE THE HEARING IS RECESSED UNLESS A CONTINUATION DATE WAS
7 PREVIOUSLY NOTICED. IT IS UNNECESSARY TO REPOST A PROPERTY FOLLOWING THE
8 COMPLETION OF AN INITIAL SESSION.

9 O. POSTPONEMENTS AND DISMISSALS.

10 1) ALL REQUESTS FOR POSTPONEMENT MUST BE FILED AS A MOTION DETAILING COMPELLING
11 CIRCUMSTANCES FOR A DELAY AND MUST INCLUDE NECESSARY SUPPORTING
12 DOCUMENTATION.

13 2) MOTIONS SHALL BE ADDRESSED TO THE CHAIRPERSON AND RECEIVED BY THE BOARD
14 ADMINISTRATOR AS SOON AS THE NEED FOR POSTPONEMENT IS KNOWN OR ANTICIPATED.
15 ABSOLUTELY NO ORAL REQUESTS WILL BE ALLOWED OR CONSIDERED.

16 3) NO REQUESTS FOR POSTPONEMENT OF A HEARING SHALL BE GRANTED ABSENT COMPELLING
17 CIRCUMSTANCES. THE FOLLOWING ARE EXAMPLES OF COMPELLING CIRCUMSTANCES THAT
18 MAY BE CONSIDERED.

19 a) HEARING DATE CONFLICT: THE FIRST CASE SET TAKES PRECEDENCE.
20 b) DEATH OR SERIOUS ILLNESS. SERIOUS ILLNESS OF, OR DEATH IN THE FAMILY OF, A
21 PARTY, COUNSEL, OR NECESSARY WITNESS.

c) CONFLICTING VACATION SCHEDULE. VACATIONS SCHEDULED BEFORE THE HEARING DATE WAS SET.

d) HEARING CARRYOVER. A PARTY OR COUNSEL BECOMING INVOLVED IN A CARRYOVER
MATTER IN ANOTHER JURISDICTION.

e) HEARINGS THAT FALL ON A RELIGIOUS OR CULTURAL HOLIDAY/CELEBRATION DAY.

4) ALL POSTPONEMENT MOTIONS SHALL BE FILED AS SOON AS POSSIBLE BUT NO LATER THAN 5 DAYS FOLLOWING THE ISSUANCE OF THE BOARD'S SCHEDULING ORDER, ABSENT PRIOR WRITTEN PERMISSION FROM THE CHAIRPERSON.

5) MOTIONS FILED INCORRECTLY OR IMMEDIATELY PRECEDING THE SET HEARING DATE WILL NOT RECEIVE A RULING, AND NAMED PARTIES MUST APPEAR ON THE SCHEDULED DATE.

6) FAILURE BY A NAMED PARTY TO APPEAR AS ORDERED MAY RESULT IN THE IMMEDIATE
DISPOSITION OF A MATTER BY A MAJORITY VOTE OF THE BOARD.

7) IF A POSTPONEMENT IS GRANTED FOR AN INITIAL HEARING DATE, THE PETITIONER SHALL REPOST THE PROPERTY WITH THE NEW HEARING DATE AND TIME. THE PARTY WHOSE MOTION TO POSTPONE WAS GRANTED SHALL BEAR SIGNAGE POSTING EXPENSES ASSOCIATED WITH REPOSTING.

8) UPON A PARTY'S THIRD REQUEST FOR POSTPONEMENT, THE BOARD MAY DISMISS THE PETITION BY A MAJORITY VOTE.

9) THE BOARD SHALL DISMISS A PETITION WHERE IT LACKS JURISDICTION TO PROCEED.

20 10) A CASE MAY BE TRANSFERRED TO THE INACTIVE DOCKET THROUGH A MOTION AND ORDER
21 FOR 180 DAYS. IF A NAMED PARTY DOES NOT REQUEST THE CASE BE RETURNED TO THE
22 ACTIVE DOCKET BEFORE THE 180-DAY EXPIRATION, THE BOARD MAY DISMISS THE MATTER

1 WITHOUT FURTHER NOTICE. A MOTION TO PLACE A MATTER ON THE INACTIVE DOCKET SHALL
2 BE A POSTPONEMENT REQUEST.

3 P. CORRESPONDENCE. WRITTEN CORRESPONDENCE SUBMITTED TO THE BOARD WITHOUT THE
4 REQUIRED WRITTEN CERTIFICATION OF SERVICE SHALL IMMEDIATELY BE REJECTED AND
5 RETURNED BY THE BOARD ADMINISTRATOR. THE BOARD SHALL NOT CONSIDER THE
6 COMMUNICATION.

7 Q. PENDING CASES IN COURT. THE BOARD SHALL CONDUCT A LIMITED PUBLIC HEARING FOR ANY
8 DOCKETED CASE WHERE A MOTION TO STAY HAS BEEN SUBMITTED ALLEGING THAT THE SAME
9 MATTER IS PENDING IN A COURT OF LAW. THE SOLE PURPOSE OF THE EVIDENTIARY HEARING
10 SHALL BE TO DETERMINE IF THE DOCKETED PETITION INVOLVES SUBSTANTIALLY THE SAME
11 ISSUES AS A CASE ALREADY FILED AND PENDING IN A COURT OF LAW. THE BURDEN SHALL BE
12 UPON THE MOVANT TO DEMONSTRATE BY SUBSTANTIAL PROBATIVE EVIDENCE THAT THE
13 MATTER IN COURT AND BEFORE THE BOARD INVOLVES THE SAME DISPUTED ISSUES.

14 1) IF THE BOARD DETERMINES THAT THE TWO CASES INVOLVE SUBSTANTIALLY THE SAME
15 ISSUES, NO FURTHER HEARINGS SHALL BE CONDUCTED, AND THE BOARD ADMINISTRATOR
16 SHALL CHANGE THE CASE STATUS TO "PENDING" UNTIL AN INTERESTED PARTY PROVIDES
17 WRITTEN NOTIFICATION TO THE BOARD ADMINISTRATOR THAT THE COURT OF LAW HAS
18 ISSUED A FINAL DECISION. UPON RECEIVING SUCH NOTIFICATION, THE MATTER WILL BE
19 MOVED TO THE BOARD'S "ACTIVE" CASE CALENDAR AND SCHEDULED FOR A HEARING AT THE
20 EARLIEST FEASIBLE DATE.

21 2) IF A NAMED PARTY FAILS TO NOTIFY THE BOARD WITHIN 45 DAYS AFTER THE COURT'S FINAL
22 DECISION ISSUANCE, THE BOARD MAY, BY ITS INITIATIVE OR MOTION OF ANOTHER, DISMISS
23 THE DOCKETED MATTER WITHOUT FURTHER NOTICE.

RULE 6.0. CASES

A. CATEGORIES. THE BOARD OF APPEALS ADJUDICATES CASES FALLING INTO TWO MAIN CATEGORIES:

- 1) MATTERS UNDER ORIGINAL JURISDICTION. UNLIKE APPELLATE JURISDICTION, WHEN A HIGHER TRIBUNAL REVIEWS A LOWER TRIBUNAL'S DECISION, ORIGINAL JURISDICTION MEANS THE BOARD CAN HEAR AND DECIDE A CASE FOR THE FIRST TIME BEFORE ANY APPELLATE REVIEW BY A COURT OF LAW. SOME LAND USE CASES, INCLUDING CONDITIONAL USES, VARIANCES, AND NONCONFORMING USES, MAY HAVE A HEARING CONDUCTED BY A HEARING EXAMINER. A DECISION OF THE HEARING EXAMINER MAY BE APPEALED, LEADING TO A DE NOVO REVIEW BY THE BOARD. DURING THE BOARD'S REVIEW, A NEW HEARING IS CONDUCTED, AND THE CASE IS RECONSIDERED FROM THE BEGINNING WITHOUT REGARD TO ANY PREVIOUS FINDINGS OR LEGAL CONCLUSIONS. PARTIES ARE ALLOWED TO INTRODUCE NEW EVIDENCE AND PRESENT NEW ARGUMENTS.

2) APPEALS OF AN ADMINISTRATIVE AGENCY DECISION. THESE CASES INVOLVE CONTESTED MATTERS RESULTING FROM ANY FINAL ORDER, DECISION, REQUIREMENT, OR INTERPRETATION MADE BY AN ADMINISTRATIVE OFFICIAL TO ENFORCE ANY REGULATED MATTER.

THE CASES DESCRIBED IN SUBSECTION 2 ABOVE ARE FURTHER CATEGORIZED INTO TWO SUBCATEGORIES:

i. *DE NOVO APPEALS OF AN ADMINISTRATIVE AGENCY DECISION. THIS CATEGORY INCLUDES SUBJECT MATTERS INVOLVING CERTAIN DECISIONS BY THE DEPARTMENT OF*

1 PLANNING AND ZONING IN RESPONSE TO ALTERNATE COMPLIANCE REQUESTS AND
2 PLANNING BOARD DECISIONS RELATED TO DEVELOPMENT PLANS.

3 a) DURING A HEARING BEFORE THE BOARD, NO CONSIDERATION IS GIVEN TO ANY PRIOR
4 RULINGS, FINDINGS OF FACT, OR CONCLUSIONS OF LAW. THE BOARD'S HEARING IS
5 BASED ON THE ORIGINAL ADMINISTRATIVE AGENCY'S ACTION.

6 b) PARTIES TO THE MATTER MAY CALL WITNESSES, INTRODUCE NEW EVIDENCE, AND
7 PRESENT NEW ARGUMENTS.

8 ii. *ON THE RECORD APPEALS OF ADMINISTRATIVE AGENCY DECISIONS.* THIS CATEGORY
9 INCLUDES DECISIONS BY THE ADMINISTRATIVE AGENCIES FOLLOWING A QUASI-
10 JUDICIAL PUBLIC HEARING.

11 a) THESE CASES ARE NOT SUBJECT TO REVIEW BY A HEARING EXAMINER AND MUST BE
12 APPEALED DIRECTLY TO THE BOARD OF APPEALS.

13 b) THE ADMINISTRATIVE AGENCY INVOLVED MUST HAVE CONDUCTED A QUASI-JUDICIAL
14 PUBLIC HEARING DURING WHICH AN OFFICIAL RECORD WAS CREATED.

15 c) THE BOARD'S SCOPE OF REVIEW DURING THE APPEAL IS CONFINED TO THE ESTABLISHED
16 WRITTEN RECORD. NO NEW EVIDENCE OR WITNESSES MAY BE INTRODUCED.

17 ARGUMENTS BEFORE THE BOARD MUST FOCUS SOLELY ON THE LEGAL BASIS
18 REGARDING WHETHER THE AGENCY'S DECISION WAS ERRONEOUS, ARBITRARY,
19 CAPRICIOUS, OR CONTRARY TO LAW.

20 REGARDLESS OF THE SUBCATEGORY, THE STANDARD FOR REVIEW IS BASED ON WHETHER THE
21 ADMINISTRATIVE AGENCY DECISION WAS ERRONEOUS, ARBITRARY, CAPRICIOUS, OR CONTRARY TO
22 LAW. THE DISTINCTION BETWEEN SUBCATEGORIES DEPENDS ON WHETHER A QUASI-JUDICIAL
23 HEARING WAS HELD, INVOLVING SWORN TESTIMONY AND THE ADMISSION OF EVIDENCE, AS WELL

1 AS IF AN OFFICIAL RECORD WAS CREATED DURING THE ADMINISTRATIVE AGENCY'S DECISION-
2 MAKING PROCESS.

3 THE FOLLOWING TERMS SHALL HAVE THE SPECIFIED MEANINGS WHEN USED TO IDENTIFY THE
4 STATUS OF A PARTICULAR CASE:

5 a) *RECEIVED*: A PETITION FOR APPEAL HAS BEEN SUBMITTED AND OFFICIALLY DOCKETED
6 BY THE ADMINISTRATOR.

7 b) *ACTIVE*: A MATTER CURRENTLY UNDER CONSIDERATION BY THE BOARD.

8 c) *PENDING*: A MATTER IN WHICH THE PUBLIC HEARING HAS BEEN CONCLUDED AND IS
9 AWAITING A WRITTEN FINAL DECISION AND ORDER.

10 d) *CLOSED*: A MATTER FOR WHICH A FINAL WRITTEN DECISION AND ORDER HAS BEEN
11 ISSUED TO ALL PARTIES.

12 e) *INACTIVE (ALTERNATIVELY KNOWN AS THE UNSCHEDULED DOCKET)*: PROCEEDINGS ARE
13 ON HOLD FOR UP TO 180 DAYS, AS AGREED UPON BY THE PARTIES THROUGH A MUTUAL
14 MOTION AND GRANTED ORDER. DURING THE 180 DAYS, THE MATTER IS HELD IN
15 ABEYANCE WHILE THE PARTIES PURSUE A SETTLEMENT OR OTHER RESOLUTION. EITHER
16 PARTY HAS THE RIGHT TO REACTIVATE THE CASE, WHICH WILL BE MANAGED
17 FOLLOWING THE RULES.

18 B. VENUE. WHEN SUBMITTING A PETITION FOR APPEAL, THE APPELLANT MAY HAVE THE CASE
19 HEARD BY EITHER A HEARING EXAMINER OR THE BOARD OF APPEALS, UNLESS OTHERWISE
20 PROHIBITED.

21 1) CASES DECIDED BY A HEARING EXAMINER MAY BE FURTHER APPEALED TO THE BOARD OF
22 APPEALS IN ACCORDANCE WITH THESE RULES.

1 2) A FINAL DECISION AND ORDER OF THE BOARD OF APPEALS MAY BE APPEALED TO A COURT
2 OF LAW PURSUANT TO SECTION 501(D) OF THE HOWARD COUNTY CHARTER.

3 C. TIMELINESS. AN INDIVIDUAL WISHING TO APPEAL ANY FINAL ORDER, DECISION, REQUIREMENT,
4 OR INTERPRETATION MADE BY AN ADMINISTRATIVE OFFICIAL IN THE ENFORCEMENT OF ANY
5 MATTER MUST FILE AN APPEAL PETITION WITHIN 30 DAYS OF THE DATE OF THAT
6 ADMINISTRATIVE DECISION UNLESS THE LAW PROVIDES A DIFFERENT PERIOD OR METHOD FOR
7 APPEAL.

8 D. ATTENDANCE. EACH NAMED PARTY IN A DOCKETED CASE AND REGULAR BOARD MEMBER IS
9 EXPECTED TO ATTEND ALL MEETINGS AND HEARINGS IN PERSON, ABSENT COMPELLING
10 CIRCUMSTANCES.

11 1) *VIRTUAL PARTICIPATION*. ANY BOARD MEMBER REQUESTING TO PARTICIPATE
12 VIRTUALLY MUST REQUEST PERMISSION IN WRITING FROM THE CHAIRPERSON.
13 PERMISSION SHALL ONLY BE GRANTED IN CASE OF COMPELLING CIRCUMSTANCES AS
14 DEFINED BY THESE RULES, SUCH AS ILLNESS OR FAMILY EMERGENCIES THAT PREVENT
15 THE BOARD MEMBER FROM ATTENDING IN PERSON.

16 2) *ABSENCE*. ANY BOARD MEMBER UNABLE TO ATTEND A SCHEDULED HEARING OR
17 MEETING MUST NOTIFY THE CHAIRPERSON AND BOARD ADMINISTRATOR IN WRITING AS
18 SOON AS THE MEMBER BECOMES AWARE OF THEIR ANTICIPATED ABSENCE. THE
19 CHAIRPERSON SHALL IMMEDIATELY REQUEST AN ALTERNATE MEMBER BE CALLED UP
20 OR ASSIGNED FROM THE POOL OF ALTERNATE APPOINTED MEMBERS AS DEFINED BY
21 THESE RULES.

22 3) THE BOARD ADMINISTRATOR SHALL PROVIDE WRITTEN NOTIFICATION TO THE
23 CHAIRPERSON AND BOARD CLERK ANY TIME A REGULAR OR ALTERNATE MEMBER HAS

ACCUMULATED 3 ABSENCES WITHIN 12 MONTHS. THE CHAIRPERSON SHALL NOTIFY THE COUNTY COUNCIL AND REQUEST ACTION, INCLUDING POTENTIAL REMOVAL AND REPLACEMENT OF THE DELINQUENT BOARD MEMBER.

E. VOTING. ONLY BOARD MEMBERS WHO PARTICIPATED DURING ALL PORTIONS OF A HEARING OR WORK SESSION SHALL BE ELIGIBLE TO VOTE ON A MATTER OR DECIDE A DOCKETED CASE. A FINAL DECISION SHALL HAVE THE CONCURRENCE OF A MAJORITY OF THE BOARD.

RULE 7.0 WORK SESSION GUIDELINES

9 WORK SESSIONS SERVE AS A LESS FORMAL SETTING THAN PUBLIC HEARINGS AND ARE INTENDED
10 TO ALLOW THE BOARD TO DELIBERATE PUBLICLY ON PETITIONS, ADMINISTRATIVE MATTERS, OR
11 OTHER ISSUES REQUIRING DISCUSSION.

12 A. ATTENDANCE. MEETING ATTENDEES MAY ATTEND WORK SESSIONS IN PERSON OR VIRTUALLY AS
13 PERMITTED BY THESE RULES; HOWEVER, REMOTE ATTENDEES MAY NOT HAVE ACCESS TO
14 PHYSICAL MATERIALS SHARED DURING IN-PERSON DISCUSSIONS.

15 B. OPENING OF THE WORK SESSION. FOLLOWING INTRODUCTORY REMARKS, THE PRESIDING
16 OFFICIAL SHALL ANNOUNCE THE PURPOSE OF THE WORK SESSION AND CONDUCT A ROLL CALL
17 OF ATTENDING MEMBERS

18 C. WORK SESSION PROCEDURES

19 1) WORK SESSIONS ARE OPEN TO PUBLIC OBSERVATION. MEMBERS OF THE PUBLIC,
20 GOVERNMENT OFFICIALS, AND OTHER INDIVIDUALS MAY ATTEND BUT MAY NOT
21 PARTICIPATE WITHOUT EXPRESS PERMISSION FROM THE PRESIDING OFFICIAL.
22 2) THE SESSION SHALL FOLLOW A PRE-ESTABLISHED AGENDA TO GUIDE AND STRUCTURE
23 DISCUSSION.

- 3) SUBJECT MATTER EXPERTS (SMEs) MAY BE INVITED TO PROVIDE BRIEF SUMMARIES, TECHNICAL ANALYSIS, OR COMMENTARY ON POLICY, LEGAL, OR FISCAL MATTERS RELEVANT TO THE SESSION. SMEs SHALL PROVIDE TESTIMONY WHILE SEATED IN THE DESIGNATED WITNESS AREA.
- 4) ONLY ONE BOARD MEMBER MAY SPEAK AT A TIME. THE PRESIDING OFFICIAL SHALL RECOGNIZE MEMBERS BEFORE THEY SPEAK TO ENSURE ORDERLY DISCUSSION.
- 5) WITNESSES ARE NOT REQUIRED TO BE SWORN IN PRIOR TO PROVIDING TESTIMONY DURING WORK SESSIONS.

D. VOTING PROCEDURES.

- 1) FOLLOWING DELIBERATION OF AN UNDOCKETED MATTER, ANY BOARD MEMBER MAY PROPOSE AN ACTION BY MAKING AN ORAL MOTION. NO SECOND IS REQUIRED.
- 2) UPON PRESENTATION OF A MOTION, THE PRESIDING OFFICIAL SHALL INSTRUCT THE BOARD ADMINISTRATOR TO CONDUCT A ROLL CALL VOTE AND RECORD THE OUTCOME.
- 3) BOARD MEMBERS PROPOSING A MOTION MUST ENSURE THE BOARD ADMINISTRATOR HAS ADEQUATE INFORMATION TO PREPARE ANY NECESSARY PROPOSALS OR AMENDMENTS.

RULE 8.0 ETHICAL SERVICE

20 A MEMBER OF THE BOARD SHALL WITHDRAW FROM PARTICIPATING IN ANY MATTER OR
21 PROCEEDING IN WHICH PERSONAL BIAS OR OTHER FACTORS MAY RENDER THE MEMBER UNABLE
22 TO REMAIN IMPARTIAL OR IN WHICH AN APPEARANCE OF IMPROPRIETY MAY REASONABLY BE
23 INFERRED FROM THE FACTS.

1 B. TO AVOID EVEN THE APPEARANCE OF IMPROPRIETY, A MEMBER MUST DISQUALIFY THEMSELF

2 AS TO THOSE MATTERS AND QUESTIONS IN WHICH A MEMBER HAS A DIRECT PERSONAL OR

3 PECUNIARY INTEREST IN THE OUTCOME, WHICH DIFFERS FROM THE INTEREST OF OTHER

4 CITIZENS.

5 C. ANY MEMBER WHO BELIEVES THEY MAY HAVE A CONFLICT OF INTEREST OR OTHER POTENTIAL

6 DISQUALIFYING CONCERN SHALL REQUEST A WRITTEN OPINION FROM THE HOWARD COUNTY

7 ETHICS COMMISSION BEFORE PARTICIPATING AND SHALL NOTIFY THE BOARD OF THEIR

8 REQUEST. BOARD OF APPEALS MEMBERS MAY VOLUNTARILY RECUSE THEMSELVES FROM A

9 MATTER WITHOUT SEEKING AN ADVISORY OPINION FROM THE ETHICS COMMISSION.

10 D. MEMBERS ACKNOWLEDGE THAT BY PARTICIPATING IN A HEARING OR WORK SESSION, THEY

11 HAVE EVALUATED BOTH THE SUBJECT MATTER, AND THE PARTIES INVOLVED, AND THEY ARE

12 NOT AWARE OF ANY CONFLICTS OF INTEREST OR REASONS THAT WOULD PREVENT THEM FROM

13 FULLY PARTICIPATING.

14 E. DUE TO THE COMPLEXITY OF THE QUASI-JUDICIAL PROCESS AND THE BOARD'S AUTHORITY TO

15 LIMIT INDIVIDUAL PROPERTY RIGHTS, BOARD MEMBERS SHALL NOT PARTICIPATE AS MEMBERS

16 OF ANY OTHER MUNICIPAL COUNTY BOARD, COMMISSION, OR TASK FORCE WHILE SERVING AS A

17 MEMBER OF THE BOARD OF APPEALS.

18 F. EXCEPT FOR BOARD MEMBERSHIP, BOARD OF APPEALS MEMBERS SHALL NOT BE EMPLOYED BY

19 THE HOWARD COUNTY GOVERNMENT NOR SERVE AS AN ELECTED OFFICIAL TO PUBLIC OFFICE

20 IN HOWARD COUNTY.

21

RULE 9.0 RECORD OF HEARINGS

OFFICIAL RECORD. THE BOARD OF APPEALS SHALL MAINTAIN AN OFFICIAL RECORD OF ITS PROCEEDINGS IN EACH CASE AS REQUIRED BY LAW AND POLICY. THIS RECORD SHALL INCLUDE ALL TESTIMONY AND EXHIBITS AND A RECORDING OF THE PROCEEDINGS.

TRANSCRIPTION OF TESTIMONY. ALL REQUESTS FOR TRANSCRIPTIONS OF TESTIMONY SHALL BE MADE IN WRITING TO THE BOARD ADMINISTRATOR. THE REQUESTING PARTY SHALL PAY THE COST FOR TRANSCRIPTION BEFORE THE SERVICE IS PERFORMED. THE TRANSCRIBER SHALL CERTIFY THE ACCURACY OF ANY TRANSCRIPT.

RULE 10.0 EVIDENCE

TECHNICAL REPORTS AND EXPERTS. A PARTY WISHING TO SUBMIT A TECHNICAL REPORT OR SIMILAR DOCUMENTARY EVIDENCE FOR THE BOARD'S CONSIDERATION MUST FILE ONE DIGITAL COPY AND EIGHT HARD COPIES OF THE PROPOSED EXHIBIT WITH THE BOARD ADMINISTRATOR AT LEAST 10 DAYS BEFORE THE DATE OF THE SCHEDULED HEARING. THE PARTY MUST ALSO PROVIDE ONE DIGITAL OR HARD COPY TO AN OPPONENT IN A CONTESTED CASE AT LEAST 10 DAYS BEFORE THE DATE OF THE SCHEDULED HEARING. IF TECHNICAL REPORTS ARE FILED LATE, THE BOARD MAY ELECT TO CONTINUE THE HEARING TO A LATER POINT TO ALLOW ADEQUATE TIME FOR REVIEW OF THE PROPOSED EXHIBIT.

TESTIMONY. EXPERT TESTIMONY MAY BE ADMITTED, IN THE FORM OF AN OPINION OR OTHERWISE, IF THE TESTIMONY WILL ASSIST THE BOARD IN UNDERSTANDING THE EVIDENCE OR DETERMINING A FACT IN ISSUE. THE BOARD MAY ONLY QUALIFY A WITNESS AS AN EXPERT AFTER EVALUATING THE FOLLOWING CRITERIA.

- 1) WHETHER THE WITNESS IS QUALIFIED AS AN EXPERT BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION; AND
- 2) THE APPROPRIATENESS OF THE EXPERT TESTIMONY ON THE PARTICULAR SUBJECT; AND
- 3) WHETHER A SUFFICIENT FACTUAL BASIS EXISTS TO SUPPORT THE EXPERT TESTIMONY.

C. ADMISSIBILITY. ANY EVIDENCE WHICH WOULD BE ADMISSIBLE UNDER THE RULES OF EVIDENCE APPLICABLE IN JUDICIAL PROCEEDINGS IN THE STATE OF MARYLAND SHALL BE ADMISSIBLE IN HEARINGS BEFORE THE BOARD OF APPEALS.

1) THE TECHNICAL RULES OF EVIDENCE DO NOT BIND THE BOARD, BUT THE BOARD WILL APPLY THOSE RULES SO THAT PROBATIVE EVIDENCE CAN BE CONVENIENTLY BROUGHT FORTH.

2) THE BOARD MAY EXCLUDE IMMATERIAL OR UNDULY REPETITIOUS TESTIMONY OR EVIDENCE.

3) THE BOARD MAY LIMIT THE NUMBER OF WITNESSES WHEN TESTIMONY IS CUMULATIVE.

D. BOARD QUESTIONS. BOARD MEMBERS PARTICIPATING IN A HEARING SHALL HAVE THE AUTHORITY TO ASK QUESTIONS OF WITNESSES BEFORE COMMENCING DELIBERATIONS. IF, DURING DELIBERATIONS, THE BOARD DESIRES FURTHER INFORMATION FROM A PARTY, IT SHALL REOPEN THE PRESENTATION OF EVIDENCE PORTION OF THE HEARING AND POSE THE QUESTION. THE BOARD MAY ALLOW THE APPELLANT, OPPONENT, AND THE BOARD'S LEGAL ADVISOR TO RESPOND TO THE SPECIFIC QUESTION(S) BEFORE RESUMING DELIBERATIONS.

RULE 11. ADMISSION OF EVIDENCE

A. DECISIONS OF THE BOARD SHALL BE BASED ONLY ON COMPETENT MATERIALS AND SUBSTANTIAL EVIDENCE IN THE RECORD. THE PRESIDING OFFICIAL SHALL FUNCTION TO KEEP

1 DISCUSSION AND DELIBERATION FOCUSED ON APPLICABLE STANDARDS AND RELEVANT
2 EVIDENCE. THE FOLLOWING PROCESS SHALL BE USED WHEN A PARTY WISHES TO PRODUCE AND
3 ENTER EVIDENCE INTO THE RECORD DURING A HEARING.

- 4 1) THE MOVING PARTY SHALL REMAIN SEATED, ABSENT THE PRESIDING OFFICIAL'S
5 PERMISSION TO THE CONTRARY, AND PROVIDE EIGHT HARD COPIES OF THE ITEM TO THE
6 BOARD ADMINISTRATOR.
- 7 2) PARTIES ARE ENCOURAGED TO PROVIDE AN ELECTRONIC COPY OF THE ITEM TO OPPOSING
8 PARTIES AND THE ADMINISTRATOR BEFORE THE HEARING.
- 9 3) THE ADMINISTRATOR SHALL PROVIDE ONE COPY TO THE OPPOSING PARTY AND THE
10 BOARD'S LEGAL ADVISOR, AND ONE COPY TO EACH MEMBER. THE ADMINISTRATOR SHALL
11 RETAIN ONE COPY, WHICH SHALL SERVE AS THE ONLY OFFICIAL COPY OF THE ITEM IN THE
12 RECORD. THE ITEM SHALL BE MARKED FOR IDENTIFICATION ONLY, AND THE
13 ADMINISTRATOR SHALL ANNOUNCE HOW IT WILL BE LABELED.
- 14 4) THE MOVING PARTY SHALL ASK THE WITNESS TO IDENTIFY THE MARKED ITEM. THE
15 WITNESS SHOULD PROVIDE A BRIEF AND LIMITED DESCRIPTION OF THE ITEM AND NOT
16 TESTIFY AS TO THE SPECIFIC CONTENT OR MEANING. THE WITNESS SHALL PROVIDE HOW
17 THE MARKED ITEM RELATES TO THEIR TESTIMONY AND THE CONTESTED MATTER.
- 18 5) ONCE THE WITNESS HAS FINISHED ANSWERING, THE MOVING PARTY SHALL SEEK TO HAVE
19 THE ITEM ENTERED AS EVIDENCE.
- 20 6) AFTER CONSIDERING ANY OPPOSITION TO THE EXHIBIT, THE PRESIDING OFFICIAL SHALL
21 RULE ON THE REQUEST TO MOVE THE ITEM INTO EVIDENCE. IF THE PRESIDING OFFICIAL
22 DENIES THE REQUEST, THE ITEM SHALL REMAIN IN THE RECORD FOR IDENTIFICATION
23 PURPOSES ONLY; HOWEVER, IT SHALL NOT BE ADMITTED AS EVIDENCE.

B. BY REFERENCE. PUBLIC RECORDS, PREVIOUS DECISIONS AND ORDERS OF THE BOARD OF APPEALS, TECHNICAL STAFF REPORTS, PLANNING BOARD RECOMMENDATIONS, AND HOWARD COUNTY LAWS AND REGULATIONS PERTAINING TO THE PARTICULAR CASE SHALL BE RECEIVED BY THE BOARD OF APPEALS MEMBERS FOR CONSIDERATION AT LEAST 14 DAYS BEFORE AN INITIAL HEARING. THE MATERIALS SHALL BE INCLUDED AND ACCESSIBLE IN THE PUBLIC ONLINE RECORD FOR THE CASE.

C. EXHIBITS. EXHIBITS AND PLATS ADMITTED INTO EVIDENCE MAY NOT BE MOUNTED AND SHALL BE FOLDED TO A MAXIMUM SIZE OF 9 INCHES BY 14 INCHES. AN EXACT DUPLICATE OF THE EXHIBIT MAY BE MOUNTED AND USED FOR PRESENTATION PURPOSES DURING THE HEARING.

10 D. HEARSAY EVIDENCE. WITNESS TESTIMONY OFFERED AS HEARSAY MAY BE ACCEPTED FOR
11 EITHER SUPPLEMENTING OR EXPLAINING ANY DIRECT EVIDENCE, PROVIDED IT IS NOT OFFERED
12 TO PROVE THE TRUTH OF THE MATTER ASSERTED. HEARSAY EVIDENCE SHALL NOT, IN AND OF
13 ITSELF, BE CONSIDERED SUFFICIENT TO SUPPORT A FINDING OR DECISION.

RULE 12. MOTIONS

- A. FORM. A PARTY MAY REQUEST THE BOARD TO ADDRESS A MATTER BY FILING A WRITTEN REQUEST AS A MOTION TO THE BOARD.
- B. CERTIFICATION. ALL MOTIONS SHALL INCLUDE CERTIFICATION THAT A COPY WAS PROVIDED TO ALL PERSONS KNOWN TO HAVE AN INTEREST IN THE CASE, INCLUDING BUT NOT LIMITED TO THE PETITIONER, THE PROPERTY OWNER, THE ADMINISTRATIVE AGENCY, AND ANY PERSON ENTITLED TO WRITTEN NOTIFICATION UNDER THESE RULES. THE CERTIFICATION SHALL STATE, "ANY PERSON INTERESTED IN RESPONDING TO THE MOTION SHALL FILE A WRITTEN RESPONSE WITH THE BOARD WITHIN 5 DAYS OF THE DATE THAT THE MOTION WAS FILED." THE BOARD

1 MAY RULE ON THE PENDING MOTION ANY TIME 10 BUSINESS DAYS AFTER THE ORIGINAL FILING

2 DATE.

3 C. FORMATTING. EXCEPT AS OTHERWISE PROVIDED, ANY PAPER FILED WITH THE BOARD SHALL BE
4 8½ INCHES WIDE AND 11 INCHES LONG, SHALL HAVE A TOP MARGIN AND LEFT-HAND MARGIN
5 OF NOT LESS THAN 1 INCH, AND SHALL BE WITHOUT A BACK OR COVER. ALL WRITING SHALL BE
6 IN BLOCK LETTER, 11-POINT FONT, AND DOUBLE-SPACED.

7

8 **RULE 13. APPEARANCES BEFORE THE BOARD OF APPEALS**

9 A. PARTIES. AN INDIVIDUAL OR ANY OTHER LEGAL ENTITY MAY BECOME A PARTY TO
10 PROCEEDINGS BEFORE THE BOARD BY REGISTERING ONLINE. PARTIES MUST PROVIDE THEIR
11 NAME AND ADDRESS OR THE NAME AND ADDRESS OF THE ENTITY THEY REPRESENT BEFORE THE
12 APPELLANT'S CASE IN CHIEF CONCLUDES UNLESS DIRECTED OTHERWISE BY THESE RULES.

13 B. APPEARANCE. INDIVIDUALS MAY APPEAR BEFORE THE BOARD, PROVIDED THEY ARE A PARTY
14 OR ARE DULY AUTHORIZED TO REPRESENT A PARTY TO THE PROCEEDINGS BEFORE THE BOARD.
15 ALL PARTIES ARE REQUIRED TO PRESENT THEIR CASE EFFICIENTLY. DELAYING PROCEEDINGS
16 WILL NOT BE TOLERATED. ANY PERSON EMPLOYING DILATORY TACTICS SHALL BE REMOVED
17 FROM PARTICIPATING FURTHER IN THE CASE.

18 C. PARTIES TO ADMINISTRATIVE APPEALS FROM NOTICE OF VIOLATION. PARTIES TO AN
19 ADMINISTRATIVE APPEAL FROM THE ISSUANCE OF A NOTICE OF VIOLATION OF COUNTY LAWS
20 OR REGULATIONS ARE LIMITED TO THE PETITIONER AND THE ADMINISTRATIVE AGENCY
21 ISSUING THE VIOLATION NOTICE.

1 D. PARTIES TO ADMINISTRATIVE APPEALS ON THE RECORD. PARTIES TO AN ADMINISTRATIVE
2 APPEAL TO BE HEARD BY THE BOARD ON THE RECORD ARE LIMITED TO THE ADMINISTRATIVE
3 AGENCY AND THE PARTIES OF RECORD BEFORE THE ADMINISTRATIVE AGENCY.

4 E. SPOKESPERSON. WHEN A GROUP OF INDIVIDUALS APPEARS IN OPPOSITION TO A PETITION, THE
5 PRESIDING OFFICIAL MAY REQUEST THEM TO ELECT A SPOKESPERSON. THE SPOKESPERSON
6 SHALL HAVE THE POWER TO CROSS-EXAMINE WITNESSES, CALL WITNESSES, INTRODUCE
7 EVIDENCE ON BEHALF OF THE GROUP, OBJECT TO THE INTRODUCTION OF EVIDENCE, MAKE
8 OPENING AND CLOSING STATEMENTS, AND ACT IN A REPRESENTATIVE CAPACITY SOLELY ON
9 BEHALF OF THOSE INDIVIDUALS ELECTING THE SPOKESPERSON. INDIVIDUALS NOT ELECTING TO
10 BE REPRESENTED BY A SPOKESPERSON MAY ACT INDEPENDENTLY.

11 F. REPRESENTATION BY ATTORNEY-AT-LAW. ANY PARTY IN A HEARING MAY BE REPRESENTED BY
12 AN ATTORNEY-AT-LAW ADMITTED TO PRACTICE LAW BEFORE THE SUPREME COURT OF
13 MARYLAND. AN ATTORNEY, ACTING UNDER AN AGREEMENT WITH A CLIENT FOR LEGAL
14 REPRESENTATION, SHALL FILE A WRITTEN NOTICE OF APPEARANCE WITH THE BOARD BEFORE
15 APPEARING ON A PARTY'S BEHALF AT A HEARING. THE NOTICE OF APPEARANCE SHALL LIST THE
16 NAMES AND ADDRESSES OF INDIVIDUALS OR ENTITIES THE ATTORNEY REPRESENTS AND THE
17 ATTORNEY'S FIRM NAME, THEIR NAME, ADDRESS, AND TELEPHONE NUMBER.

18 G. WITHDRAWAL OF APPEARANCE. AN ATTORNEY MAY WITHDRAW THEIR APPEARANCE BY
19 PROVIDING THE BOARD WITH WRITTEN NOTICE.

RULE 14. SUBPOENAS

22 A. ISSUANCE. THE BOARD MAY ISSUE A SUBPOENA ON ITS OWN INITIATIVE AND MAY GRANT OR
23 DENY A REQUEST BY PARTIES TO A PROCEEDING.

B. REQUESTS. A PARTY ENTITLED TO THE ISSUANCE OF A SUBPOENA UNDER THESE RULES SHALL REQUEST THE ISSUANCE OF A SUBPOENA THROUGH WRITTEN MOTION. REQUESTS FOR SUBPOENAS MUST BE RELEVANT, REASONABLE IN NATURE AND SCOPE, AND NOT OPPRESSIVE.

1) A MOTION FOR SUBPOENA TEMPLATE FORM CAN BE FOUND ON THE BOARD OF APPEALS WEBSITE AT [HTTPS://CC.HOWARDCOUNTYMD.GOV/ZONING-LAND-USE/BOARD-APPEALS](https://cc.howardcountymd.gov/zoning-land-use/board-appeals).

2) A MOTION FOR SUBPOENA SHALL INCLUDE THE FOLLOWING INFORMATION:

- a) THE NAME AND ADDRESS OF THE WITNESS WHOSE TESTIMONY IS TO BE COMPELLED.
- b) A CLEAR AND CONCISE PROFFER OF THE CONTENT AND RELEVANCE OF THE EXPECTED TESTIMONY.

c) A LIST OF ALL DOCUMENTS OR ITEMS SOUGHT TO BE PRODUCED.

d) REGULATORY CITATIONS IN SUPPORT OF THE REQUEST

C. ISSUANCE AND SERVICE OF A SUBPOENA.

1) THE CHAIRPERSON SHALL CONSIDER AND DECIDE ON A MOTION FOR SUBPOENA WITHIN 5 DAYS OF RECEIPT.

2) IF GRANTED, THE SUBPOENA SHALL BE SIGNED BY THE CHAIRPERSON AND PROMPTLY
DELIVERED TO THE PERSON REQUESTING THE SUBPOENA, WHO SHALL BE RESPONSIBLE FOR
ARRANGING SERVICE FOR THE SUBPOENA AT LEAST 7 DAYS BEFORE THE DATE OF THE
HEARING.

3) THE PERSON SERVING THE SUBPOENA SHALL CERTIFY THROUGH AN AFFIDAVIT OF SERVICE THAT THE SUBPOENA WAS SERVED PERSONALLY OR BY CERTIFIED MAIL. AN AFFIDAVIT OF SERVICE TEMPLATE FORM CAN BE FOUND ON THE BOARD OF APPEALS WEBSITE AT [HTTPS://CC.HOWARDCOUNTYMD.GOV/ZONING-LAND-USE/BOARD-APPEALS](https://cc.howardcountymd.gov/zoning-land-use/board-appeals).

1 4) THE CHAIRPERSON SHALL ALSO RULE ON ANY MOTIONS TO QUASH OR MODIFY A
2 SUBPOENA.
3 5) IF A MOTION TO GRANT, QUASH, OR MODIFY A SUBPOENA IS DENIED, A PARTY MAY APPEAL
4 THE CHAIRPERSON'S DECISION BY FILING A MOTION FOR RECONSIDERATION. THE FULL
5 BOARD OF APPEALS WILL HEAR AND DECIDE THE MOTION FOR RECONSIDERATION DURING A
6 PUBLIC HEARING.

7 D. COMPLIANCE. A PERSON WHO IS SUBPOENAED TO APPEAR AT A HEARING OR PRODUCE
8 DOCUMENTS MAY BE HELD IN CONTEMPT IF THE PERSON UNJUSTIFIABLY:
9 1) FAILS OR REFUSES TO COMPLY WITH A SUBPOENA FOR APPEARANCE.
10 2) APPEARS BUT FAILS OR REFUSES TO TESTIFY UNDER OATH; OR
11 3) REFUSES TO COMPLY WITH A DIRECTIVE OF THE PRESIDING OFFICIAL AT THE HEARING TO
12 ANSWER A RELEVANT QUESTION OR TO PRODUCE A RECORD, INCLUDING AN ELECTRONIC
13 RECORD, THAT HAS BEEN SUBPOENAED UNLESS THE DIRECTIVE IS OVERRULED BY A
14 MAJORITY VOTE OF THE MEMBERS OF THE BOARD OF APPEALS WHO ARE PRESENT AT THE
15 HEARING.

16 E. ENFORCEABILITY. BY A MAJORITY VOTE, THE BOARD OF APPEALS MAY DIRECT THEIR LEGAL
17 ADVISOR TO REQUEST A COURT OF COMPETENT JURISDICTION TO ENFORCE THE SUBPOENA,
18 COMPELLING THE ATTENDANCE OF WITNESSES AND REQUIRING THE PRODUCTION OF BOOKS,
19 PAPERS, DOCUMENTS, AND OTHER MATERIALS RELEVANT TO THE CASE AS DETAILED IN THE
20 SUBPOENA.

RULE 15. PROCEEDINGS

2 A. OVERVIEW. THE BOARD OF APPEALS IS AN ADMINISTRATIVE AGENCY THAT PERFORMS QUASI-
3 JUDICIAL FUNCTIONS, MEANING THE PROCESS IS LIKE THAT OF A COURT. PROCEEDINGS BEFORE
4 THE BOARD SHALL BE GOVERNED BY ALL APPLICABLE LAW, INCLUDING THE MARYLAND
5 ANNOTATED CODE, HOWARD COUNTY CODE, AND ESTABLISHED CASE LAW. THE BOARD IS
6 EMPOWERED TO DETERMINE A PERSON'S OR ENTITY'S RIGHTS UNDER CERTAIN COUNTY
7 ORDINANCES. MATTERS UNDER THE JURISDICTION OF THE BOARD OF APPEALS INCLUDE BUT
8 ARE NOT LIMITED TO HEARINGS ON APPEALS AND REVIEWS OF ANY FINAL ORDER,
9 REQUIREMENT, DECISION, OR DETERMINATION MADE BY AN ADMINISTRATIVE AGENCY OR BODY
10 AND HEARINGS ON APPLICATIONS FOR PERMITS OR VARIANCES. MATTERS CONCERNING SUCH
11 RIGHTS MAY ONLY BE DETERMINED BY THE BOARD AFTER CONDUCTING A QUASI-JUDICIAL
12 PROCEEDING.

13 B. QUESTIONING. QUESTIONING SHOULD BE CONCISE AND FOCUS SOLELY ON THE CRITERIA FOR
14 CONSIDERATION AS DEFINED BY CODE. IN THE CASE OF CROSS-EXAMINATION, QUESTIONS MUST
15 RELATE ONLY TO STATEMENTS MADE BY THE WITNESS DURING DIRECT EXAMINATION. NO
16 STATEMENTS OR SPEECHES SHOULD PRECEDE QUESTIONS. ALL QUESTIONS MUST BE
17 INTERROGATIVE AND MUST NOT BE ARGUMENTATIVE OR SUGGEST ANYTHING ABOUT THE
18 PERSONALITY OR MOTIVES OF THE WITNESS. AT THE DISCRETION OF THE PRESIDING OFFICIAL,
19 QUESTIONS OR CROSS-EXAMINATION SHALL BE PUT IN WRITTEN FORM AND ASKED BY THE
20 BOARD'S LEGAL ADVISOR.

21 C. QUESTIONING AN APPELLANT WITNESS. TYPICALLY, THE OPPOSITION OR A SPOKESPERSON
22 CROSS-EXAMINES, BUT ANY INDIVIDUAL WISHING TO QUESTION THE PETITIONER'S WITNESS
23 MAY DO SO WITH LEAVE FROM THE PRESIDING OFFICIAL. THE PRESIDING OFFICIAL MAY GRANT

1 THIS LEAVE AFTER RECOGNIZING THE INDIVIDUAL WHO WISHES TO QUESTION THE PETITIONER'S
2 WITNESS AND AFTER THE INDIVIDUAL HAS GIVEN THEIR NAME, HOME ADDRESS, AND, IF
3 APPROPRIATE, ITS LOCATION WITH REFERENCE TO THE PROPERTY WHICH IS THE SUBJECT OF THE
4 HEARING.

5

6 **RULE 16. DE NOVO HEARING PROCEDURES**

7 A. *OATH.* AN INDIVIDUAL TESTIFYING SHALL GIVE HIS OR HER NAME AND ADDRESS AND TAKE THE
8 FOLLOWING OATH GIVEN BY THE PRESIDING OFFICIAL: "DO YOU SOLEMNLY PROMISE TO SPEAK
9 TRUTHFULLY IN THE TESTIMONY YOU ARE ABOUT TO GIVE?"

10 B. *ORDER OF PRESENTATION.*

11 1) BOARD'S LEGAL ADVISOR INTRODUCES REPORTS AND OFFICIAL DOCUMENTS PERTAINING
12 TO THE CASE.

13 2) OPENING STATEMENTS.

14 3) PETITIONER'S PRESENTATION.

15 4) DIRECT EXAMINATION OF WITNESSES.

16 5) CROSS EXAMINATION OF WITNESSES BY THE OPPOSITION, BY BOARD MEMBERS, AND BY
17 THE BOARD'S LEGAL ADVISOR.

18 6) RE-DIRECT EXAMINATION OF PETITIONER'S WITNESS.

19 7) RE-CROSS EXAMINATION OF PETITIONER'S WITNESSES.

20 8) OPPOSITION'S PRESENTATION.

21 9) DIRECT EXAMINATION OF OPPOSITION'S WITNESSES.

22 10) CROSS EXAMINATION OF OPPOSITION WITNESSES BY THE PETITIONER, BY BOARD MEMBERS,
23 AND BY THE BOARD'S LEGAL ADVISOR.

1 11) RE-DIRECT EXAMINATION OF OPPOSITION'S WITNESSES.
2 12) RE-CROSS EXAMINATION OF OPPOSITION'S WITNESSES.
3 13) *PETITIONER'S REBUTTAL*. THE PETITIONER MAY PRESENT EVIDENCE TO REBUT ANY
4 EVIDENCE INTRODUCED BY THE OPPOSITION, BUT NO NEW LINE OF TESTIMONY MAY BE
5 INTRODUCED.

6 14) PETITIONER'S SUMMATION.

7 15) OPPOSITION'S SUMMATION.

8 C. *BURDEN OF PROOF*. THE BURDEN OF PROOF IS ONE OF A PREPONDERANCE OF THE EVIDENCE.
9 BY COMPETENT, MATERIAL AND SUBSTANTIAL EVIDENCE, THE APPELLANT MUST SHOW THAT
10 THEY ARE ENTITLED TO THE RELIEF REQUESTED AND THAT THE REQUEST MEETS ALL
11 PRESCRIBED STANDARDS AND REQUIREMENTS.

12 D. *THE BOARD'S ACTION*. AT THE END OF THE PRESENTATION, THE BOARD OF APPEALS WILL
13 DELIBERATE DURING AN OPEN PUBLIC MEETING. THE BOARD MAY GRANT OR DENY THE
14 PETITION, STATING ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW THROUGH THE ISSUANCE
15 OF A WRITTEN FINAL DECISION AND ORDER. ALTERNATIVELY, THE BOARD MAY TAKE THE CASE
16 UNDER ADVISEMENT FOR FURTHER DELIBERATION AND LATER DECISION.

17 1) THE BOARD MAY NOT CONSIDER EVIDENCE FROM EITHER SIDE AFTER THE HEARING IS
18 CONCLUDED.

19 2) THE BOARD MAY ORDER LEGAL MEMORANDA TO BE SUBMITTED BY THE PROONENT AND
20 OPPONENT SUMMARIZING THEIR ARGUMENTS AND PROPOSED FINDINGS OF FACTS AND
21 CONCLUSIONS OF LAW.

22

RULE 17. ADMINISTRATIVE APPEAL HEARING PROCEDURES

A. DE NOVO APPEALS. THE PROCEDURES OUTLINED IN THE DE NOVO HEARING PROCEDURES SECTION OF THESE RULES APPLY TO ADMINISTRATIVE APPEALS HEARD DE NOVO, EXCEPT FOR THE BURDEN OF PROOF.

1) *BURDEN OF PROOF.* IN AN APPEAL OF AN ADMINISTRATIVE AGENCY'S ISSUANCE OF A NOTICE OF VIOLATION OF COUNTY LAWS AND REGULATIONS, THE BURDEN OF PROOF IS UPON THE ADMINISTRATIVE AGENCY TO SHOW THAT THE APPELLANT VIOLATED THE LAWS OR REGULATIONS IN QUESTION BY A PREPONDERANCE OF THE EVIDENCE.

2) IN ALL OTHER DE NOVO APPEALS NOT RELATED TO A NOTICE OF VIOLATION, THE BURDEN OF PROOF IS UPON THE APPELLANT TO SHOW THAT THE ACTION TAKEN BY THE ADMINISTRATIVE AGENCY WAS CLEARLY ERRONEOUS, ARBITRARY, CAPRICIOUS, OR CONTRARY TO LAW.

B. *APPEALS ON THE RECORD.*

- 1) *RECORD TRANSCRIPT.* WITHIN 30 DAYS OF FILING AN APPEAL ON THE RECORD FROM AN ACTION OF AN ADMINISTRATIVE AGENCY, THE APPELLANT SHALL FILE WITH THE BOARD ADMINISTRATOR ONE DIGITAL COPY AND ONE HARDCOPY OF THE TRANSCRIPT RECORD OF THE HEARING BEING APPEALED AND SHALL SERVE ONE DIGITAL COPY OF THE TRANSCRIPT RECORD WITH THE ADMINISTRATIVE AGENCY. THE BOARD ADMINISTRATOR SHALL PROVIDE EACH BOARD MEMBER WITH A COPY OF THE TRANSCRIPT WITHIN 2 DAYS FOLLOWING RECEIPT.

1 2) *MEMORANDUM OF APPELLANT.* WITHIN 15 DAYS OF FILING THE TRANSCRIPT, THE
2 APPELLANT SHALL FILE A MEMORANDUM STATING CONCISELY ALL POINTS ON WHICH THE
3 APPEAL IS BASED AND AN ARGUMENT SUPPORTING EACH POINT.

4 3) *FILING REQUIREMENTS.* THE APPELLANT SHALL FILE ONE DIGITAL COPY AND ONE HARD
5 COPY OF THE MEMORANDUM WITH THE BOARD ADMINISTRATOR AND SHALL SERVE ONE
6 DIGITAL COPY TO THE ADMINISTRATIVE AGENCY. THE BOARD ADMINISTRATOR SHALL
7 PROVIDE EACH BOARD MEMBER WITH A COPY OF THE MEMORANDUM WITHIN 2 DAYS
8 FOLLOWING RECEIPT. THE MEMORANDUM SHALL INCLUDE:

- 9 a) POINTS OF LAW;
- 10 b) REFERENCES TO LEGAL AUTHORITY;
- 11 c) PAGE CITATIONS OF PORTIONS OF THE TRANSCRIPT RECORD; AND
- 12 d) EXHIBITS BY NUMBER.

13 4) *ADMINISTRATIVE AGENCY'S REPLY MEMORANDUM.* WITHIN 15 DAYS OF THE APPELLANT'S
14 MEMORANDUM BEING FILED, THE ADMINISTRATIVE AGENCY SHALL FILE A REPLY
15 MEMORANDUM WITH THE BOARD. THE AGENCY SHALL FILE ONE DIGITAL COPY AND ONE
16 HARD COPY OF THE MEMORANDUM WITH THE BOARD ADMINISTRATOR AND SHALL SERVE
17 ONE DIGITAL COPY TO THE APPELLANT. THE MEMORANDUM SHALL ANSWER CONCISELY
18 ALL POINTS ON WHICH THE APPEAL IS BASED AND AN ARGUMENT AGAINST EACH POINT. THE
19 BOARD ADMINISTRATOR SHALL PROVIDE EACH BOARD MEMBER WITH A COPY OF THE
20 REPLY MEMORANDUM WITHIN 2 DAYS OF SUBMISSION. THE ARGUMENTS SHALL INCLUDE:

- 21 a) POINTS OF LAW;
- 22 b) REFERENCES TO LEGAL AUTHORITY;
- 23 c) PAGE CITATIONS TO PARTICULAR PORTIONS OF THE RECORD TRANSCRIPT; AND

1 d) EXHIBITS BY NUMBER.

2 5) *SANCTIONS FOR LATE FILING OF MEMORANDUM.*

3 a) IF THE APPELLANT FAILS TO FILE THE REQUIRED MEMORANDUM IN A TIMELY MANNER,

4 THE BOARD MAY DISMISS THE APPEAL.

5 b) IF THE ADMINISTRATIVE AGENCY FAILS TO FILE THE REQUIRED REPLY MEMORANDUM

6 IN A TIMELY MANNER, THE BOARD MAY RULE ON ITS OWN INITIATIVE, FOR SUMMARY

7 JUDGMENT IN FAVOR OF THE APPELLANT WITHOUT FURTHER NOTICE.

8 6) *ORAL ARGUMENTS.* THE BOARD MAY ENTERTAIN ORAL ARGUMENTS BASED ON THE

9 RECORD. THE BOARD MAY LIMIT THE LENGTH OF ORAL ARGUMENTS.

10 7) *BURDEN OF PROOF.* THE BURDEN OF PROOF SHALL BE ON THE APPELLANT TO SHOW THAT

11 THE ACTION TAKEN BY THE ADMINISTRATIVE AGENCY WAS CLEARLY ERRONEOUS,

12 ARBITRARY, CAPRICIOUS, OR CONTRARY TO LAW.

13 8) *THE BOARD'S ACTION.* THE BOARD MAY DISMISS, AFFIRM, OR MODIFY THE AGENCY'S

14 ACTION. ALTERNATIVELY, THE BOARD MAY REMAND THE ACTION TO THE AGENCY FOR

15 FURTHER PROCEEDINGS OR AN ALTERNATE DISPOSITION.

17 **RULE 18. DECISION AND ORDER: PROCESS AND ISSUANCE**

18 A. *DECISION AND ORDER.* ALL DOCKETED MATTERS HEARD BY THE BOARD OF APPEALS SHALL
19 RECEIVE DISPOSITION THROUGH THE ISSUANCE OF A FINAL DECISION AND ORDER.

20 1) THE WRITTEN DECISION AND ORDER OF THE BOARD SHALL BE SIGNED BY THE VOTING
21 BOARD MEMBERS AND THE BOARD'S LEGAL ADVISOR WHO PREPARED THE DOCUMENT.

22 2) THE BOARD'S FINAL DECISION AND ORDER SHALL INCLUDE FINDINGS OF FACT AND
23 CONCLUSIONS OF LAW.

1 3) THE DECISION AND ORDER SHALL BE MADE A PART OF THE RECORD OF THE PROCEEDINGS,
2 FILED WITH THE DEPARTMENT OF PLANNING AND ZONING AS PART OF THE PERMANENT
3 RECORD, AND MAINTAINED AS PART OF THE OFFICIAL RECORDS OF THE COUNTY.

4 B. DISSENTING OR CONCURRING OPINION. ANY MEMBER(S) OF THE BOARD OF APPEALS WHO
5 PARTICIPATED IN A HEARING MAY FILE A DISSENTING OR CONCURRING OPINION. SUCH
6 DISSENTING OR CONCURRING OPINION(S) SHALL BE MADE A PART OF THE RECORD OF
7 PROCEEDINGS AND INCLUDED AS PART OF THE BOARD'S FINAL DECISION AND ORDER.

8 C. DECISION AND ORDER TIMELINE.

9 1) THE BOARD SHALL DELIBERATE AND DECIDE ON EACH CASE NO LATER THAN 30 DAYS
10 AFTER ALL PARTIES HAVE RESTED THEIR CASE.

11 2) A FINAL WRITTEN DECISION AND ORDER SHALL BE ISSUED NO LATER THAN 60 DAYS AFTER
12 THE BOARD HAS DELIBERATED AND DECIDED A CASE.

13 3) THE BOARD'S LEGAL ADVISOR SHALL PROVIDE THE BOARD ADMINISTRATOR WITH A
14 PRELIMINARY DRAFT VERSION OF THE WRITTEN DECISION AND ORDER, INCLUDING FINDINGS
15 OF FACTS AND CONCLUSIONS OF LAW DETERMINED BY THE BOARD, NO LATER THAN 30
16 DAYS AFTER THE BOARD HAS RENDERED ITS VERBAL DECISION DURING A PUBLIC HEARING.

17 4) THE BOARD ADMINISTRATOR SHALL PROVIDE EACH BOARD MEMBER WITH AN ELECTRONIC
18 COPY OF THE PRELIMINARY DRAFT DECISION AND ORDER WITHIN 1 DAY.

19 5) THE BOARD SHALL DIRECT THEIR LEGAL ADVISOR TO MAKE AMENDMENTS TO THE DRAFT
20 DECISION AND ORDER NO LATER THAN 5 DAYS AFTER THE PRELIMINARY DRAFT HAS BEEN
21 TRANSMITTED TO THE BOARD ADMINISTRATOR.

22 6) BOARD MEMBER-DIRECTED AMENDMENTS MAY INCLUDE ANY CONCURRENT OR DISSENTING
23 OPINION.

1 7) THE BOARD'S LEGAL ADVISOR SHALL PROVIDE A FINALIZED WRITTEN DECISION AND
2 ORDER TO THE BOARD ADMINISTRATOR NO LATER THAN 45 DAYS AFTER THE BOARD HAS
3 RENDERED ITS ORAL DECISION DURING A PUBLIC HEARING.

4 8) THE BOARD ADMINISTRATOR SHALL PROVIDE EACH BOARD MEMBER WITH AN ELECTRONIC
5 COPY OF THE UNSIGNED FINAL DECISION AND ORDER WITHIN 1 DAY.

6 9) THE BOARD ADMINISTRATOR SHALL ARRANGE TO HAVE THE DOCUMENT SIGNED BY ALL
7 BOARD MEMBERS NO LATER THAN 5 DAYS FOLLOWING RECEIPT FROM THE BOARD'S LEGAL
8 ADVISOR.

9 10) *EXTENSION.* THE BOARD, AT THE REQUEST OF THE BOARD'S LEGAL ADVISOR, AND WITH
10 GOOD AND SUFFICIENT REASON, MAY EXTEND THE TIME FOR ISSUANCE OF A WRITTEN
11 DECISION AND ORDER TO NO LATER THAN 75 DAYS AFTER THE BOARD ISSUES ITS ORAL
12 DECISION.
13 a) AN EXTENSION OF TIME SHALL BE CONSIDERED ONLY DURING A PUBLIC MEETING.
14 b) THE BOARD'S LEGAL ADVISOR MUST NOTIFY NAMED PARTIES INVOLVED IN A MATTER
15 BEING CONSIDERED FOR AN EXTENSION OF TIME AT LEAST 5 DAYS BEFORE THE PUBLIC
16 MEETING WHERE THE EXTENSION WILL BE DISCUSSED.
17 c) AT THE PRESIDING OFFICIAL'S DISCRETION, PARTIES SHALL HAVE THE OPPORTUNITY TO
18 BRIEFLY BE HEARD DURING A PUBLIC HEARING BEFORE THE BOARD'S DELIBERATION
19 AND DECISION OF AN EXTENSION REQUEST.

20 11) *PUBLICATION.* THE BOARD ADMINISTRATOR SHALL POST THE FINAL DECISIONS AND
21 ORDERS:

1 a) ELECTRONICALLY MAIL THE FULLY SIGNED FINAL DECISIONS AND ORDERS TO EACH
2 NAMED PARTY OR THEIR REPRESENTATIVES WITHIN 3 DAYS OF RECEIPT FROM THE
3 COUNTY SOLICITOR.

4 b) ON THE BOARD OF APPEALS WEBSITE FOR PUBLIC CONSUMPTION WITHIN 3 DAYS OF
5 RECEIPT FROM THE COUNTY SOLICITOR.

6 D. APPEALS FROM DECISIONS OF THE BOARD. ANY PERSON, OFFICER, DEPARTMENT, BOARD, OR
7 BUREAU OF THE COUNTY WHO BELIEVES THEY ARE AGGRIEVED BY A DECISION OF THE BOARD
8 OF APPEALS MAY APPEAL TO THE CIRCUIT COURT FOR HOWARD COUNTY WITHIN 30 DAYS OF
9 THE DECISION.

10 1) THE BOARD OF APPEALS SHALL BE A PARTY TO ALL APPEALS AND SHALL BE REPRESENTED
11 BY THE OFFICE OF LAW AT ANY SUCH HEARING.
12 2) ONCE AN APPEAL IS FILED IN CIRCUIT COURT, THE BOARD NO LONGER RETAINS
13 JURISDICTION AND MAY NOT SUSPEND ITS DECISION AND ORDER OR CONSIDER A MOTION
14 FOR RECONSIDERATION.

15

16 **RULE 19. REVISORY POWER OF THE BOARD**

17 A. REQUEST OF A PARTY. WITHIN 15 DAYS OF THE BOARD PUBLISHING A FINALIZED WRITTEN
18 DECISION AND ORDER, A PARTY OF RECORD MAY FILE A MOTION FOR RECONSIDERATION. THE
19 BOARD SHALL CONSIDER THE WRITTEN MOTION AS SOON AS PRACTICABLE, PREFERABLY
20 DURING THE NEXT PUBLIC HEARING OR MEETING.

21 1) THE BOARD MAY REVISE ITS DECISION AND ORDER IF THE PARTY PETITIONING FOR
22 RECONSIDERATION ESTABLISHES A MISTAKE OF FACT OR ERROR OF LAW.

1 2) THE MOTION FOR RECONSIDERATION MAY INCLUDE A REQUEST TO SUSPEND THE DECISION
2 AND ORDER.

3 B. PROCESS. A PARTY OF RECORD MAY FILE A WRITTEN RESPONSE TO A MOTION FOR
4 RECONSIDERATION WITHIN 5 DAYS FOLLOWING THE FILING OF A MOTION FOR
5 RECONSIDERATION.

6 1) THE BOARD SHALL NOT CONSIDER NEW OR ADDITIONAL EVIDENCE UNLESS IT IS PROVEN
7 THAT SUCH EVIDENCE COULD NOT REASONABLY HAVE BEEN PRESENTED DURING THE
8 ORIGINAL HEARING.

9 2) IF THE BOARD DETERMINES TO REVISE ITS DECISION AND ORDER, THE BOARD SHALL SEND
10 A COPY OF THE REVISED DECISION AND ORDER TO EACH PARTY WITHIN THE TIMELINES
11 SPECIFIED WITHIN THESE RULES.

12 C. CLERICAL ERROR. AT ANY TIME, ON ITS OWN INITIATIVE OR BY THE MOTION OF A PARTY, THE
13 BOARD MAY MODIFY ITS DECISION TO CORRECT A CLERICAL ERROR.

14 D. TIME FOR APPEAL TO CIRCUIT COURT. FILING A MOTION FOR RECONSIDERATION DOES NOT
15 SUSPEND THE TIME FOR FILING AN APPEAL TO THE COURT UNLESS THE BOARD FIRST SUSPENDS
16 ITS DECISION AND ORDER.

17

18 **RULE 20. SEVERABILITY**

19 IF ANY CLAUSE, SENTENCE, OR PART OF THESE RULES IS DEEMED INVALID BY A COURT OF

20 LAW, THE REMAINING PROVISIONS SHALL REMAIN VALID.

21

RULE 21. REQUIRED TRAINING

2 A. WITHIN 6 MONTHS OF APPOINTMENT, EACH BOARD MEMBER, INCLUDING ALTERNATE
3 MEMBERS, SHALL:

4 1) COMPLETE THE "PLANNING COMMISSION, PLANNING BOARD AND BOARD OF APPEALS
5 EDUCATION COURSE" AS DEFINED IN THE ANNOTATED CODE OF MARYLAND AND OFFERED
6 THROUGH THE MARYLAND DEPARTMENT OF PLANNING.

7 2) REVIEW MATERIALS FROM PUBLICLY OFFERED PLANNING COURSES DESIGNED BY THE
8 HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING THAT EDUCATE RESIDENTS ON
9 HOW THE PLANNING AND LAND DEVELOPMENT PROCESS WORKS AND COMPLETE IN-PERSON
10 OR VIRTUAL TRAINING IF SUCH COURSES ARE OFFERED.

RULE 22. REQUIRED EDUCATION

13 THIS SECTION OUTLINES THE REGULATIONS GOVERNING THE QUASI-JUDICIAL PROCESS,
14 LAND USE LAW, AND PUBLIC PLANNING EDUCATION, COLLECTIVELY REFERRED TO AS THE
15 EDUCATION PROGRAM. THE PRIMARY OBJECTIVE OF THE EDUCATION PROGRAM IS TO ENHANCE
16 THE BOARD MEMBERS' UNDERSTANDING OF THEIR ROLES AND RESPONSIBILITIES. BOARD MEMBERS
17 ARE STRONGLY ENCOURAGED TO SEEK ADDITIONAL FORMAL LEARNING OPPORTUNITIES BEYOND
18 THE FOUNDATIONAL CURRICULUM OF THE EDUCATION PROGRAM.

19 A. DEFINITIONS. THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANING WITHIN THIS
20 SECTION.

21 1) *APPROVED COURSE.* A COURSE, APPROVED BY THE BOARD OF APPEALS CLERK, OFFERED BY
22 A PERSON, INSTITUTION, ORGANIZATION, OR ENTITY THAT SATISFIES THE MANDATORY

1 CURRICULUM OF THE EDUCATION PROGRAM AND FOR WHICH MEMBERS SHALL RECEIVE
2 CERTIFICATION.

3 2) *AUTHORIZED INSTRUCTOR.* LICENSED PROFESSIONAL PLANNERS OR ATTORNEYS
4 EXPERIENCED IN LAND USE MATTERS LICENSED TO PRACTICE IN MARYLAND AND WHO
5 PROVIDE DIRECT STUDENT INSTRUCTION
6 3) *CERTIFICATE OF COMPLETION.* WRITTEN DOCUMENTATION PROVIDED TO MEMBERS
7 SERVING AS EVIDENCE OF SATISFACTORY COMPLETION OF AN APPROVED COURSE.
8 4) *COURSE PROVIDER.* AN INSTITUTION, ORGANIZATION, ENTITY, OR INDIVIDUAL QUALIFIED
9 BY TRAINING AND EXPERIENCE TO OFFER AN APPROVED COURSE.

10 5) *EXEMPTIONS.* MEMBERS WHO PROVIDE DOCUMENTED PROOF OF COMPLETING A MORE
11 EXTENSIVE COURSE OF STUDY IN QUASI-JUDICIAL PROCESS, LAND USE LAW, AND PLANNING
12 THAN WHAT IS REQUIRED BY THE EDUCATION PROGRAM SHALL BE EXEMPT FROM
13 COMPLETING THAT REQUIREMENT. NONETHELESS, ALL BOARD OF APPEALS MEMBERS
14 MUST MEET THE MANDATED TRAINING STANDARDS SET FORTH IN THESE REGULATIONS.

15 B. *REQUEST FOR CONTINUING EDUCATION.* ANY BOARD MEMBER WISHING TO ATTEND A
16 CONTINUING EDUCATION OFFERING SHALL SUBMIT A WRITTEN REQUEST FOR APPROVAL TO THE
17 CLERK THROUGH THE BOARD ADMINISTRATOR. REQUEST FORMS CAN BE FOUND ONLINE ON
18 THE BOARD'S WEBSITE AT [HTTPS://CC.HOWARDCOUNTYMD.GOV/ZONING-LAND-USE/BOARD-APPEALS](https://cc.howardcountymd.gov/zoning-land-use/BOARD-APPEALS).

20 1) REQUESTS COMPLIANT WITH THIS SECTION SHALL BE DEEMED APPROVED PENDING
21 BUDGETARY RESTRICTIONS.

2) WRITTEN REQUESTS TO ATTEND TRAINING SHALL BE SUBMITTED AT LEAST 30 DAYS BEFORE THE EDUCATIONAL OFFERING WHENEVER POSSIBLE AND SHALL CONTAIN THE FOLLOWING INFORMATION.

- a) THE TITLE OF THE COURSE AND THE NAME OF THE HOSTING ORGANIZATION.
- b) COURSE LENGTH, INCLUDING THE TOTAL NUMBER OF SESSIONS, LENGTH OF SESSION(S),
AND THE FREQUENCY WITH WHICH THEY WILL BE OFFERED.

c) A DESCRIPTION OF THE COURSE CONTENT, PREFERABLY A SYLLABUS. ANY PRACTICAL WORK REQUIREMENT TO BE COMPLETED BY THE BOARD MEMBERS SHALL BE IDENTIFIED IN THE REQUEST.

d) A LIST OF ANY TEXT OR MATERIALS TO BE USED DURING THE COURSE, INCLUDING WHETHER THE TEXT OR MATERIALS SHALL BE MANDATORY OR RECOMMENDED.

e) IF AVAILABLE, THE INSTRUCTORS' NAMES, CREDENTIALS, AND RELEVANT PROFESSIONAL EXPERIENCE.

f) A LIST OF WHICH CORE EDUCATIONAL CONTENT AREA IS TO BE COVERED AND HOW MUCH TIME WILL BE DEDICATED TO EACH OF THE FIVE DOMAINS OUTLINED IN THIS SECTION.

C. CURRICULUM. THIS SECTION SETS FORTH THE BASIC REQUIREMENTS FOR THE EDUCATION PROGRAM CURRICULUM. COURSE PROVIDERS MAY OFFER COMBINED OR SEPARATE COURSES AND CLASSES FOR NEW OR EXPERIENCED MEMBERS. HOWEVER, THE COURSE MUST COVER EACH TOPIC LISTED IN THIS SECTION TO BE CONSIDERED FOR APPROVAL AND APPLICABLE TO THE MANDATORY EDUCATION REQUIREMENT. THE EDUCATIONAL PROGRAM SHALL HAVE FIVE KEY SEGMENTS TOTALING 5 HOURS OF CONTINUING EDUCATION ANNUALLY AND AN ADDITIONAL 3 HOURS BIANNUALLY, AS LISTED BELOW.

1 1) *APPLICATIONS & PETITIONS.* (1.5 HOURS ANNUALLY) THE PURPOSE OF THE DEVELOPMENT
2 APPLICATION REVIEW PROCESS SEGMENT OF THE EDUCATION PROGRAM IS TO PROVIDE AN
3 OVERVIEW OF DEVELOPMENT APPLICATIONS THAT COME BEFORE THE BOARD, THEIR
4 ADMINISTRATION, REVIEW, AND HEARING PROCESS. MANDATORY TOPICS INCLUDE HOW TO
5 READ, ANALYZE, AND REVIEW A LAND DEVELOPMENT PLAN. IN ADDITION TO THE
6 TECHNICAL ASPECTS OF READING A PLAN, THE ANALYSIS SHALL EXPLORE SITE VISITS AND
7 THE PLAN'S RELATIONSHIP TO LOCAL DESIGN STANDARDS AND REGULATIONS, INCLUDING
8 SITE PLAN, SUBDIVISION, ZONING, AND HEALTH REGULATIONS. THE ANALYSIS SHALL ALSO
9 EXPLORE THE RELATIONSHIP BETWEEN COUNTY AND STATE REGULATIONS. THE OVERVIEW
10 OF THE PLAN REVIEW SHALL INCLUDE THE ROLE OF REPORTS FROM COUNTY
11 PROFESSIONALS, SUBJECT MATTER EXPERTS, THE APPLICANTS, AND THE PUBLIC.

12 2) *DECISION MAKING.* (1.5 HOURS BI-ANNUALLY) DETERMINING FINDINGS OF FACT AND
13 CONCLUSIONS OF LAW, AND STANDARDS FOR REVIEW.

14 3) *GENERAL PLAN.* (2 HOURS ANNUALLY) UNDERSTANDING THE GENERAL PLAN OF HOWARD
15 COUNTY AND RELATED COMPONENTS, INCLUDING BUT NOT LIMITED TO HOWARD COUNTY
16 COMPLETE STREETS, THE HOWARD COUNTY LANDSCAPING MANUAL, AND ADEQUATE
17 PUBLIC FACILITIES (APFO). CORRELATING THE RELATIONSHIP OF THE GENERAL AND
18 COMPREHENSIVE ZONING PLANS TO THE ORDINANCES AND REGULATIONS.

19 4) *LAW.* (1.5 HOURS ANNUALLY) REVIEW OF MARYLAND LAND USE ACT, COUNTY LAND USE
20 LAW, LOCAL REDEVELOPMENT AND HOUSING LAW, OR OTHER RELEVANT LAND USE AND
21 PLANNING LAWS AND RULES.

22 5) *QUASI-JUDICIAL PROCEDURES.* (1.5 HOURS BI-ANNUALLY) THIS DOMAIN PROVIDES AN
23 OVERVIEW OF THE BOARD'S RESPONSIBILITIES IN CONDUCTING AND PARTICIPATING IN

1 HEARINGS. IT COVERS KEY ELEMENTS OF THE HEARING PROCEDURE, INCLUDING QUORUM
2 REQUIREMENTS, THE ROLES OF THE APPLICANT, OPPONENTS, PUBLIC, BOARD MEMBERS
3 (INCLUDING THE CHAIR), AND EXPERT WITNESSES. PARTICIPANTS WILL ALSO LEARN ABOUT
4 THE MANAGEMENT OF EVIDENCE, PUBLIC QUESTIONING AND TESTIMONY, BOARD
5 INQUIRIES, THE BURDEN OF PROOF, MOTIONS AND RESOLUTIONS, AND QUALIFICATIONS FOR
6 PARTICIPATION IN A HEARING.

7

8 **RULE 23. ELECTRONIC SUBMISSIONS**

9 A. *DEFINITIONS*. THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS IN THE
10 CONTEXT OF THIS SECTION.

11 1) *ENVELOPE*: A SINGLE EMAIL OR ELECTRONIC FOLDER IN WHICH SUBMISSIONS ARE FILED.
12 AN ENVELOPE SHOULD CONTAIN ALL SUBMISSIONS RELATED TO ONE CASE THAT ARE FILED
13 SIMULTANEOUSLY. FOR EXAMPLE, A NEW CASE ENVELOPE MIGHT INCLUDE THE FOLLOWING
14 FIVE SUBMISSIONS IN ONE ENVELOPE: A COMPLETED PETITION, EXHIBITS TO THE PETITION,
15 CERTIFICATION OF SERVICE, AND A PRELIMINARY MOTION. DO NOT USE SEPARATE
16 ENVELOPES FOR SUBMISSIONS FILED SIMULTANEOUSLY IN THE SAME CASE

17 2) *FILER*. A PERSON WHO UTILIZES ELECTRONIC FILING, SUCH AS EMAIL OR OTHER DIGITAL
18 MEDIUM, TO MAKE A SUBMISSION TO THE BOARD OF APPEALS.

19 3) *FILING CODE*. AN APPROVED CAPTION OF A SUBMISSION. ONLY THE BOARD
20 ADMINISTRATOR SHALL USE FILING CODES FOR ORDERS. A LIST OF APPROVED FILING
21 CODES MAY BE FOUND ONLINE AT [HTTPS://CC.HOWARDCOUNTYMD.GOV/ZONING-LAND-
22 USE/BOARD-APPEALS](https://cc.howardcountymd.gov/zoning-land-use/board-appeals).

23 4) *SUBMISSION*: A PDF OR JPEG FILE CONTAINED WITHIN AN ENVELOPE OR INDIVIDUALLY.

1 B. E-FILING PROCESS. WHEN AUTOMATED FILING IS UNAVAILABLE IN A DOCKETED CASE, A PARTY
2 MAY FILE AN ELIGIBLE SUBMISSION BY EMAIL. SUBMISSIONS SHALL BE DIRECTED TO
3 BOA@HOWARDCOUNTYCOUNCIL.COM. THE EMAIL'S SUBJECT LINE SHALL BE FORMATTED AS
4 "DOCKET NUMBER_FILING_CODE_PARTY LAST NAME". AN EXAMPLE OF AN ACCEPTABLE
5 EMAIL SUBJECT LINE FOR AN ELECTRONIC SUBMISSION IS BA-99-000_MOTION
6 POSTPONEMENT_SMITH.

7 1) THE ADMINISTRATOR SHALL REJECT ANY EMAIL SUBMISSION THAT IS NOT PROPERLY
8 FORMATTED AS REQUIRED BY THESE RULES. A REJECTED SUBMISSION MUST BE
9 RESUBMITTED FOR CONSIDERATION BY THE BOARD AND DOES NOT EXTEND A DEADLINE
10 FOR SUBMISSION.

11 2) AN ELECTRONIC SUBMISSION RECEIVED WITHOUT ANY ATTACHMENT SHALL BE REJECTED
12 AND THE ADMINISTRATOR SHALL ENTER A NO-DOCUMENT INCLUDED NOTATION IN THE
13 ONLINE RECORD.

14 C. ELECTRONICALLY FILE (E-FILE) A SUBMISSION. AN INDIVIDUAL MAY NOT E-FILE A SUBMISSION
15 ON BEHALF OF ANOTHER UNLESS THE FILER IS AN ATTORNEY REPRESENTING A PARTY TO A
16 MATTER.

17 1) ALL E-FILE SUBMISSIONS SHALL BE CAPABLE OF BEING CONVERTED INTO ELECTRONIC
18 FORMAT AND THAT, IN ELECTRONIC FORMAT, MAY BE CONVERTED INTO A LEGIBLE PAPER
19 DOCUMENT.

20 2) A PARTY WISHING TO SUBMIT A FILE THAT EXCEEDS THE PERMITTED SIZE CAPACITY SHALL
21 CONTACT THE BOARD ADMINISTRATOR FOR FURTHER DIRECTION AND ACCESS TO A CLOUD-
22 BASED MASS STORAGE REPOSITORY.

1 D. EXEMPTION FROM E-FILE. THE FOLLOWING TYPES OF EMAIL SUBMISSIONS SHALL NOT BE E-
2 FILED WITHOUT PRIOR AUTHORIZATION OF THE BOARD ADMINISTRATOR.

3 1) AN ORIGINAL PETITION FOR APPEAL.
4 2) A SINGLE DOCUMENT OF MORE THAN 50 PAGES.
5 3) OVERSIZED DOCUMENTS, SUCH AS BLUEPRINTS, MAPS, AND PLATS.
6 4) ITEMS THAT CANNOT BE FILED ELECTRONICALLY BECAUSE OF THEIR PHYSICAL NATURE.

7 E. SUBMISSION REVIEW BY BOARD ADMINISTRATOR. AS SOON AS PRACTICABLE, THE BOARD
8 ADMINISTRATOR SHALL REVIEW EACH DOCUMENT SUBMISSION FOR COMPLIANCE WITH THE
9 RULES OF PROCEDURE. IF THE ADMINISTRATOR DETERMINES THAT THE SUBMISSION IS NON-
10 COMPLIANT, THE ADMINISTRATOR SHALL REJECT THE SUBMISSION AND PROMPTLY NOTIFY THE
11 FILER.

12 F. SUBMISSION REJECTION. THE ADMINISTRATOR SHALL NOTE ON THE ONLINE DOCKET THAT A
13 SUBMISSION WAS RECEIVED BUT WAS REJECTED FOR NONCOMPLIANCE WITH THE RULES OF
14 PROCEDURE.

15 1) NO FURTHER DESCRIPTION OF THE NATURE OF THE REJECTED SUBMISSION SHALL BE
16 ENTERED.
17 2) A CORRECTED AND REFILED SUBMISSION SHALL NOT REFERENCE THE FILING OF THE
18 REJECTED SUBMISSION.
19 3) A FILER WHOSE SUBMISSION WAS DENIED BY THE ADMINISTRATOR MAY SEEK A REVIEW OF
20 THE ACTION BY FILING A MOTION FOR RECONSIDERATION BY THE BOARD.

21 G. BOARD OF APPEALS PUBLIC WEBSITE AND CALENDAR. ALL CONTESTED CASE MATTERS BEFORE
22 THE BOARD OF APPEALS SHALL BE PUBLISHED BY THE ADMINISTRATOR ON THE BOARD'S
23 WEBSITE [HTTPS://CC.HOWARDCOUNTYMD.GOV](https://cc.howardcountymd.gov) AS SOON AS PRACTICABLE UPON DOCKETING.

1 1) EACH MATTER WITHIN THE INDIVIDUAL CASE CALENDAR SHALL BE CATEGORIZED IN THE
2 FOLLOWING CHRONOLOGICAL FORMAT UNDER THE "CASE MATERIALS" SECTION. THE
3 TITLE OF THE INFORMATION HEADINGS SHALL READ "FILE DATE, DOCUMENT NAME,
4 COMMENT." EACH DOCUMENT NAME SHALL BE HYPERLINKED TO THE PHYSICAL DOCUMENT
5 AND VIEWABLE ONLINE.

6 2) THE BOARD ADMINISTRATOR SHALL ENSURE THAT ALL DOCKETED MATTERS ARE KEPT
7 CURRENT AND UP TO DATE IN THE ONLINE SYSTEM.

8 3) THE BOARD ADMINISTRATOR SHALL ENTER ANY RELEVANT INFORMATION IN THE
9 COMMENT SECTION IF A NOTATION IS REQUIRED FOR A CASE.

10


Howard County
Internal Memorandum

SUBJECT: *Alternate Board Member*

TO: Howard County Board of Appeals

FROM: Gary W. Kuc, County Solicitor *HWK*

Barry Sanders, Senior Assistant County Solicitor *BaMS*
Amanda Mihill, Senior Assistant County Solicitor *AMH*

DATE: April 10, 2025

This memorandum sets forth the main grounds for our prior legal advice that a Charter amendment is necessary to provide an alternate member for the Board of Appeals. In our opinion, providing for an alternate member without such an amendment would conflict with the Charter and is therefore legally insufficient and could provide a basis for a court to overturn a Board decision made with an alternate member.

Applicable Interpretation Principles

A county “charter is equivalent to a constitution.” *Baltimore City Bd. of Elections v. Mayor of Baltimore*, 489 Md. 465, 478 (2025) (internal quotation marks omitted). “As with a constitution, a charter ‘provide[s] a broad organizational framework establishing the form and structure of government in pursuance of which the [local jurisdiction] is to be governed and local laws enacted.’” *Id.* at 248-49 (alteration in original) (internal quotation marks omitted). “[T]he basic function of a charter is to distribute power among various agencies of government, and between the government and the people who have delegated that power to their government.” *Id.* at 248 (alteration in original) (internal quotation marks omitted).

“The canons of construction used to interpret statutory language apply with equal force to the interpretation of a charter provision.” *Prince George’s County v. Thurston*, 479 Md. 575, 586 (2022). “The Court’s primary objective is to ascertain the purpose and intent of the charter’s framers.” *Id.* “Because we assume that the framers express their intent in the text of the charter, we principally focus on the plain language of the challenged provision as the primary source of legislative intent.” *Id.* (internal quotation marks omitted). “To discern legislative intent, we first assign the words of the charter provision their ordinary and natural meaning.” *Id.* (internal quotation marks omitted). A court “will not divine a legislative intention contrary to the plain language of the charter provision or judicially insert language to impose exceptions, limitations[,] or restrictions not evident in the plain language.” *Id.* (alteration in original) (internal quotation marks omitted). A court will “neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute,” nor does a court “construe a

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statute with forced or subtle interpretations that limit or extend its application.” *Town of Bel Air v. Bodt*, 487 Md. 354, 370 (2024).

Howard County Charter, Article V, Board of Appeals

The Board of Appeals is created by the Howard County Charter. *Howard County v. Mangione*, 47 Md. App. 350, 352 (1980). “On November 5, 1968, pursuant to Article XI-A of the Maryland Constitution, the voters of Howard County, Maryland adopted a charter form of government, which, among other things, provided for a County Board of Appeals” *Id.* The authority for the County doing so is Section 10-305(a)(1) of the Local Government Article of the Annotated Code of Maryland (“Express Powers Act”), which authorizes a charter county to enact local laws providing “for the establishment of a county board of appeals.” *Id.* at 352 & n.1. Article V of the Charter is Howard County’s exercise of this State authority to establish a board of appeals. “The Howard County Board of Appeals is an administrative body, acting in a quasi-judicial capacity.” *Mortimer v. Howard Research & Development Corp.*, 83 Md. App. 432, 442 (1990). But it has no judicial powers and a hearing before it is not a judicial proceeding. *See Health v. Mayor of Baltimore*, 187 Md. 296, 304 (1946).

Section 501(a) of the County Charter establishes the Board and, in accordance with Section 10-305(a)(2) of the Express Powers Act, provides for “the number, qualifications, and compensation of the members of the board of appeals.” Subsection (a) provides as follows:

The County Board of Appeals shall consist of five registered voters and residents of the County appointed by the Council. Appointees shall serve overlapping terms of five years from the first day of January of the year of their appointments, or until their successors are appointed. Vacancies, except those at the expiration of a term, shall be filled in the same manner as the original appointment and for the unexpired term. No member shall be reappointed after having served eight consecutive years immediately prior to reappointment. No more than three members shall be registered with the same political party. The members of the Board shall be paid at the rate of Twelve Hundred Dollars (\$1,200.00) per year unless such compensation be changed as provided in Section 501(f) of this article. Members of the Board shall receive reasonable and necessary expenses as may be provided in the budget.

Under the rules for interpreting the Charter, the language of Section 501(a) is clear and unambiguous concerning the number of members of the Board and the lack of textual support for alternate members. Under current law, the Board “shall consist of” – i.e., be made up or composed of – five members. The five-member Board is an increase from its original three members pursuant to voter approval of a Charter amendment proposed by Council Resolution 89-1980.¹ The

¹ An amendment to the County Charter may be proposed to the voters by the County Council or by a petition of the County’s registered voters in accordance with Section 1001 of the Charter.

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amendment proposed, among other things, “to increase the number of members from three to five.” Thus, since its adoption in 1968, the Charter language has been consistently interpreted and applied to set the total number of Board members. Under current law, the Board only has the five members appointed by the Council. No text in Section 501(a) indicates the Board could have any members other than its five members.

Further, the Council’s power of appointment is limited to the five members of the Board. That is, the Council’s power to appoint Board members is exhausted once its five seats are filled by incumbents. “[O]nce the power to appoint has been validly exercised, any subsequent appointment to the same office will be void unless the incumbent has been removed or the office has otherwise become vacant. It is axiomatic that two persons cannot occupy the same office at the same time.” *Goodman v. Clerk of the Circuit Court for Prince George’s County*, 291 Md. 325, 329 (1981) (citing C.J.S. *Officers* § 43). Regarding removal, the Council is empowered to remove a Board member in accordance with Section 903 of the Charter. *See Clark v. O’Malley*, 169 Md. App. 408, 434 (2006) (removal must occur in accordance with the law providing for the removal), *aff’d*, 404 Md. 13 (2008). Regarding vacancy, “[a]n office vacancy may be created by the failure of the person selected to qualify within the prescribed time, by resignation or removal, or by death.” 17 M.L.E. *Officers* § 22 (Feb. 2025) (footnotes omitted). *See also* 67 C.J.S. *Officers* § 164 (Dec. 2024) (“[A]n office becomes vacant by reason of the death, retirement, dismissal, promotion, or other permanent absence of the former incumbent.”) (footnote omitted). Thus, the Council cannot exercise its appointment power over the Board unless and until the Council removes a member, a Board member vacates his or her office, or the term of a member is expiring or is the last permissible one.

Other Charter Provisions

Other Charter sections do provide an alternate for certain County officials and officers. This demonstrates that the Charter’s framers knew how to provide for such a situation, yet they have not done so thus far for the Board in Section 501(a). *See Maryland-Nat’l Capital Park & Planning Comm’n v. Anderson*, 164 Md. App. 540, 577 (This demonstrates that the General Assembly was well aware of how to confer a right of appeal. Yet, such language is noticeably absent in P.S. § 3-108(a)(3).”), *aff’d*, 395 Md. 172 (2005).

For example, Charter Section 703 provides for a five-member Personnel Board, the fifth member of which is an employee in the classified service, and for “an alternate who is a member of the classified service and who shall serve on the board only in the absence of the employee member.” Similarly, in the case of a temporary absence of the Chief Administrative Officer or the head of any office or department in the Executive Branch, the Executive may designate a temporary appointee to serve as acting. Charter Section 304(a), (b). The Charter also contains a similar provision for the office of the County Executive if the Executive is temporarily absent or

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disabled. Charter Section 302(g).

The Board's hearing examiner is an example of the need for an amendment to the Charter to change its establishment of the Board. "The Board of Appeals may exercise the functions and powers" as prescribed in Section 501(b) and in implementing legislation passed in accordance with Section 501(f). The language of Section 501(b) authorizes only the Board to exercise the functions and powers so specified. Therefore, when the County Council decided they wanted a hearing examiner for the Board, a Charter amendment was necessary to meet this need given the clear and unambiguous text of Section 501(b) vesting jurisdiction in the Board only. *See Howard Research & Dev. Corp. v. Concerned Citizens for the Columbia Concept*, 297 Md. 357, 364 (1983) (§ 501(b) is "clear and unambiguous"). Accordingly, Section 502 provides: "The County Council may appoint hearing examiners to conduct hearings and make decisions concerning matters within the jurisdiction of the Board of Appeals." In the same way, the current Board membership of five members established by Section 501(a) must be amended to provide alternate Board members. Amending the Charter requires a Charter amendment. Section 1001.

State Law

The need for a Charter amendment is also demonstrated by the State law providing for a board of appeals for non-charter counties and municipalities. That law requires such jurisdictions to provide for the appointment of a board of appeals and for the board to consist of at least three members. Md. Code Ann., Land Use §§ 4-301(a), 4-302(a). In addition to the regular members of the board, these jurisdictions must also "designate one alternate member" for the board. *Id.* § 4-302(f)(1). These jurisdictions may also designate a "temporary alternate" in defined circumstances. *Id.* § 4-302(f)(1). While these provisions are inapplicable to Howard County, they demonstrate that the members of a board of appeals are different from an alternate member. Because Section 501(a) clearly and unambiguously establishes the Howard County Board of Appeals as a five-member board only and does not provide for an alternate, the Charter must be amended to provide for a different membership arrangement for the Board.

Two Other Considerations

As we understand the Board's consideration of the alternate member issue at the meeting on March 27, 2025, the Board appears to be proceeding with its proposal without a Charter amendment on certain grounds. The first is that the Board can only act if a quorum of its members is present and the majority approves the proposed action. This is a correct statement of law. *Gemeny v. Prince George's County*, 264 Md. 85, 88-89 (1972) ("a quorum of the body is required for 'the transaction of business,' and the passage of any motion, ordinance, by-law, or any other permitted act in the absence of a quorum is void"). *See Floyd v. Mayor of Baltimore*, 407 Md. 461, 465 n.2 (2009) ("A quorum is defined as 'that number of the body which, when assembled in their proper place, will enable them to transact their proper business; or, in other words, that

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number that makes the lawful body, and gives them the power to pass a law or ordinance.”). The second is that no single member or minority of the Board can act for the Board. *Board of County Commr’s of St. Mary’s County v. Guyther*, 40 Md. App. 244, 247 (1978) (“Because only two competent members were present, however, a quorum did not exist. In the absence of a quorum, the vote on the motion to appeal was void.”). This is also a correct statement of law. However, these two statements of law do not provide a legal basis for the Board to have an alternate member or for the Council to appoint them. Without a Charter amendment, the proposed alternate conflicts with Section 501(a) of the Charter as discussed above.

Another consideration for the Board is the effect of an alternate’s participation in a proceeding and decision of the Board without a Charter amendment. If an alternate is unlawful under Section 501(a), which we advise it is, this illegality will provide an aggrieved party with another legal ground for overturning a decision of the Board on appeal. *See Grooms v. LaVale Zoning Bd.*, 27 Md. App. 266, 275 n.4 (1975) (“Because there was then no lawfully created position of hearing examiner, the decision of the person who assumed such an office was held to be void.”).

Conclusion

Use of an alternate for the five appointed members of the Board of Appeals requires a Charter amendment. Using an alternate without an amendment conflicts with Section 501(a) and thus is legally insufficient and could provide a basis for a court to overturn a Board decision made with an alternate member.

cc: Michelle Harrod, Council Administrator
 Kel Berg, Board Administrator
 Nick Rinehart, Legislative Analyst

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**BRIEF IN SUPPORT OF THE INTERPRETATION THAT APPOINTMENT OF
ALTERNATE MEMBERS TO THE BOARD OF APPEALS DOES NOT REQUIRE A
CHARTER AMENDMENT**

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I. STATEMENT OF THE ISSUE

Whether the appointment of alternate members to the County Board of Appeals—who serve only when a regular member is absent or recused—violates the Charter provision stating that the Board "shall consist of five registered voters and residents of the County," and thus requires a charter amendment.



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II. STATEMENT OF THE FACTS

Section 501(a) of the County Charter states:

“The County Board of Appeals shall consist of five registered voters and residents of the County appointed by the Council.”

The Council is considering appointing alternate members to serve on the Board of Appeals when regular members are absent. These alternates would not serve unless temporarily filling in for a regular member.

Opponents argue that the Charter prohibits more than five total appointees to the Board. Proponents maintain that the Board is limited to five **active members at any time**, and alternates do not exceed that number.

III. SUMMARY OF THE ARGUMENT

The Charter provision refers to the Board as it **functions in session**, not as a limitation on how many individuals may be appointed to serve as potential members. Alternate members, who serve **only as needed**, never increase the number of individuals **actively sitting on the Board beyond five**.

This approach:

- Preserves the five-member requirement;
- Reflects widely accepted government practice;
- Ensures the Board can continue to function in the absence of regular members;
- Aligns with Maryland legal principles of **practical charter construction**;



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- And respects the rule that **silence does not equal prohibition** where powers are implied and consistent with the charter's purpose.

IV. ARGUMENT

A. The Charter Limits the Active Composition of the Board, Not the Total Pool of Appointees

The phrase “*shall consist of five registered voters and residents of the County appointed by the Council*” is a statement about the **operational makeup** of the Board when convened. A board is not a collection of individuals who are independently appointed; it is a **deliberative body that acts collectively**.

Therefore, the Charter's requirement is satisfied **so long as five individuals are present when the Board is acting**. The Charter does not address, and does not prohibit, the appointment of **additional alternates** who can temporarily serve as part of that five-member body when necessary.

B. Alternate Members Do Not Serve Concurrently with Regular Members

Alternate members:

- Serve **only when a regular member is absent or recused**;
- Are **not part of the Board** except while acting in a substitutive capacity;
- **Do not participate in deliberations or voting** unless officially seated.

This structure ensures that **at no time does the Board consist of more than five individuals**, thus remaining fully consistent with the Charter's language.



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C. Common Law and Government Practice Support the Use of Alternates Without Charter Amendment

While § 4-302(f)(1) of the Maryland Land Use Article applies to **non-charter counties**, it reflects the **recognized necessity** of alternate appointments to maintain board functionality.

Absent express prohibition, the power to appoint alternates is implied as a necessary function of governance to preserve continuity and avoid paralysis due to absence or conflict of interest.

D. Maryland Charter Construction Doctrine Supports a Functional Interpretation

Maryland courts apply the principle of **liberal construction** to municipal charters. In *Montgomery Citizens League v. Green*, 253 Md. 151 (1969), the Court of Appeals held that a charter must be interpreted to facilitate, not hinder, governmental operation.

To read the Charter as barring alternates would frustrate the purpose of the Board and undermine the Council's duty to maintain a functioning body. By contrast, an interpretation that permits alternates while maintaining a five-member Board at all times respects both the **text and spirit** of the Charter.

E. The Absence of Explicit Authorization Does Not Imply Prohibition

The argument that alternates are prohibited simply because the Charter does not explicitly mention them is legally unfounded. Maryland law does not interpret silence as prohibition where the power in question is **reasonably implied** by an express duty or structure.



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The Council has an express duty to appoint and maintain a five-member Board of Appeals. The appointment of alternates is a **necessary implication of that duty**—allowing the Board to function even when a member is absent. Courts favor interpretations that promote practical governance and reject those that lead to absurd or unworkable results.

F. The Council's Appointment Authority Is Not Limited to Five Total Individuals, and Alternates Are Necessary to Fulfill the Board's Intended Function

The Office of Law argues that the Charter allows the Council to appoint **only five individuals** to the Board of Appeals because it states that the Board “shall consist of five... appointed by the Council.” This argument reflects a narrow reading of the Charter and fails both legally and functionally.

1. The Charter's Language Sets the Board's Operating Size, Not a Ceiling on Appointments

The Charter establishes a **five-member Board of Appeals** consisting of registered voters and residents appointed by the Council. The Charter does not set the quorum requirement; the local Code sets the quorum at **three members**.

The Charter's language defines the **operational composition** of the Board — that is, five members **when convened and acting**. It does not impose a cap on the **total number of qualified individuals who may be appointed** to fulfill that five-member structure at any given time.

If the drafters had intended to limit the Council's appointive authority to five individuals total — prohibiting alternates — they would have used express limiting terms. The Charter is



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silent on alternates, and such silence does not imply a prohibition, particularly where alternates are essential to the functioning of the Board.

2. Alternate Members Prevent Tie Votes and Default Denials, Ensuring Full Use of the Charter's Five-Member Structure

While the quorum for Board meetings is three, the Board ideally functions with **five members** as established by the Charter and as found in the recently adopted Rules of Practice and Procedure. When only **four members participate** and the vote results in a tie, this leads to a **default denial of the appeal** under local procedures.

This outcome:

- Denies petitioners a clear decision on the merits;
- Fails to reflect the will of a majority of a full five-member Board;
- And deprives the parties of the **full review and deliberation contemplated by the Charter.**

The appointment of alternates ensures that:

- The Board can **convene with five members** more consistently;
- **Tie votes are avoided**, eliminating procedural denials that do not reflect an adjudicative decision;
- Petitioners receive **the full benefit of a complete Board of Appeals** as intended by the Charter.

3. The Appointment of Alternates Is a Necessary and Implied Power

Even if not expressly mentioned in the Charter, the Council's power to appoint alternates is implied from its duty to maintain a functioning Board. Maryland courts recognize that express



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powers include those reasonably necessary to effectuate those powers. (*Wicomico County v. Todd*, 256 Md. 459 (1970).)

Without alternates, the Board risks failing to function as intended, leading to delays and default denials, which contradict the Charter's purpose.

V. CONCLUSION

The Council's authority to appoint members to the Board includes implied authority to appoint alternates who ensure the full five-member Board operates effectively. Alternates do not expand the Board or violate the Charter — they ensure the Board functions as the Charter intended, providing fair and full adjudication of appeals.

A	B	C	D	E	F	G	H
Item Number	ROP Page Reference ROP V1.17.25	Domain	Issue	OOL Comments	BOA Action	Rationale	OOL Response
1	Page 2, Line 10	INTRODUCTION	Language Specificity	We read the phrase "specific requirements and standards, including" to mean only an existing law applicable to the Board in performing its prescribed functions. If the intent here is to refer to something other than applicable existing law or the Employee Manual, such "standards" should be expressly listed to satisfy due process requirements.	Revised text to read: "must comply with specific requirements and standards included in the Howard County Employee Manual that pertain to Executive Exempt employees"	Provide clarity	Accepted- Issue Resolved
2	Page 2, Line 11	INTRODUCTION	Language Specificity	We read the reference to the "Employee Manual" as an affirmative choice by the Board to make itself subject to the provisions of the Manual, because it only applies to "employees in both the exempt and non-exempt service." Manual, p. 4. While Board members are in the exempt service pursuant to Charter Section 702, they are not "employees" of the County as that term is used in Title I of the County Code.	Add text: "that pertain to Executive Exempt employees"	Provide specific applicable standards	Accepted- Issue Resolved
3	Page 3, line 22	DEFINITIONS	Definition of "Appellant"	Just want to flag that both "Appellant" and "Petitioner" (#37) are used in the rules. Given the definitions, consider whether both terms are needed.	Italicize petitioner, strike "contested" from pg 7, line 18	Terms are context specific and have differing meanings based on the case type.	Accepted- Issue Resolved
4	Page 4, lines 11-16	DEFINITIONS	Definition of "Alternate Member"	The OOL believes a charter amendment is necessary to allow for an Alternate member on the BOA.	No change. A legal brief on the Board's position is being provided to Council for their review and final disposition.	The Board believes that legal precedent establishes a charter amendment is unnecessary to allow for an alternate member.	Disputed- Unresolved.
5	Page 4, line 17	DEFINITIONS	Definition of "Board of Appeals Legal Advisor"	The County Solicitors office is required to represent the BOA during an appeal to the courts.	No change needed.	The terms legal advisor describes a function and not a specific person or office. The terms does not conflict with other provisions of the Code.	Accepted- Issue Resolved
6	Page 6, line 7	DEFINITIONS	Term "Egregious"	We recommend removing the word "egregious". Using this second adjective implies non "egregious" dilatory tactics are permissible. The word "egregious" is also arguably vague and ambiguous, which can be a due process problem. The baseline principle here is that "dilatory" tactics by a party in case is cause for unfavorable action by the Board against the party. Dilatory tactics themselves may be grounds for an adverse action. They don't need to be "egregious".	Remove "egregious"	As stated by OOL	Accepted- Issue Resolved
7	Page 7, line 10	DEFINITIONS	Definition of "Majority Vote"	Under Maryland law, a "majority" of 5 is 3. "Four-fifths" of 5 is 4.	This was a typographical error on the draft. Corrected to reflect three-fifths.	As stated by OOL	Accepted- Issue Resolved
8	Page 9, lines 17-18	RULE 1.0 ORGANIZATION	Incompatibility with Charter	We recommend rephrasing or removing the sentence starting with "Each" on line 8 and ending with "member" on line 9. We understand the intent here is to reflect the Council's historic practice of each Council member nominating one individual for the Council's consideration in its appointments to the Board. The sentence does not reflect this intent but rather indicates that each Council district is represented by a Board member, which is contrary to the express language of Charter Section 705(a), "The County Board of Appeals shall consist of five registered voters and residents of the County appointed by the County Council."	Removing reference to members being councilmatic by striking the sentence starting with "Each" on line 8 and ending with "member" on line 9.	As stated by OOL	Accepted- Issue Resolved
9	Page 10, lines 1-22 to p 11, lines 1-12	RULE 1.0 ORGANIZATION	Alternate member Charter issue	the General Assembly enacted Section 4-302(f) pursuant to its power to zone and plan. LU Title 4, Subtitle 3. Second, in the Express Powers Act the General Assembly delegated the power to zone and plan in a charter county to the county. Md. Code Ann., Local Government ("LG") § 10-324 (2013 Repl. Vol. & 2020 Supp.). Accordingly, the County likewise has the power to authorize an alternate member for its Board. Based on the language of Charter Section 501(a) concerning the Board's current structure, our opinion is that a Charter Amendment would be needed to make this change to the Board. Therefore, references to an alternate member throughout the draft Rules of Procedure should be removed and the desire of the Board to have such a member can be communicated to the County Council in another manner.	No change. A legal brief on the Board's position is being provided to Council for their review and ultimate decision.	The Board believes that legal precedent establishes a charter amendment is unnecessary to allow for an alternate member.	Disputed- Unresolved.
10	Page 12, line 15, and throughout document	RULE 1.0 ORGANIZATION	Use of the term "Hearing Authority"	This is a defined term in the Zoning Regulations and means both the Hearing Examiner and the Board of Appeals. Recommend only using the term "Board of Appeals" throughout the Board's rules.	Removing "Hearing Authority".	Language added elsewhere to clarify that the term Board of Appeals includes the Hearing Examiner.	Accepted- Issue Resolved
11	Page 13, line 14	RULE 2.0 ADMINISTRATIVE OPERATIONS	Code incompatibility	This currently conflicts with Code section 16.801(c)(7).	No change, BOA recommends change to 16.801(c)(7). See companion document.	Rules deconflict role of DPZ and support efficient Board operations.	Accepted
12	Page 15, lines 4-22, to page 16, lines 1-10	RULE 2.0 ADMINISTRATIVE OPERATIONS	Definition of "Board of Appeals Legal Advisor"	Discussion with OOL needed regarding this section	Language updated.	The terms legal advisor describes a function and not a specific person or office. The terms does not conflict with other provisions of the Code.	Accepted- Issue Resolved
13	Page 17, line 12	RULE 3.0 PETITION PROCESS	Petition amendment process	Recommend inserting after "remanded" the following text: "to the prior reviewing agency". Matters can come to the Board from more than one agency.	Revise sentence to say "The Board may order that an amended petition be remanded to the prior reviewing agency, or may request additional agency review as needed."	As stated by OOL	Accepted- Issue Resolved
14	Page 17, lines 15-16	RULE 3.0 PETITION PROCESS	Comment	This should be one of the updates to Title 16 necessitated by the final Board rules. Currently, section 16.801(c)(7) regarding TSRs for the Board do not include such a rule but the Council could add such a rule in (c)(7) as the Council has for the TSRs referenced in (c)(6).	Strike lines 15-16	BOA recommends change to 16.801(c)(7). See companion document.	Accepted- Issue Resolved
15	Page 19, line 5	RULE 3.0 PETITION PROCESS	Text is missing	...by the Administrator <u>when/once</u> the scheduling order is issued.	add "when" after "Administrator"	As stated by OOL	Accepted- Issue Resolved
16	Page 19, lines 20-21	RULE 4.0 PUBLIC NOTICE	Board Administrator role regarding notice	No further newspaper advertising shall be required by any party following the 60-day period.	No change	Text is sufficient as written . OOL misread the proposal.	Accepted- Issue Resolved

Item Number	ROP Page Reference ROP V1.17.25	Domain	Issue	OOL Comments	BOA Action	Rationale	OOL Response
17	Page 22, line 9	RULE 4.0 PUBLIC NOTICE	County posting responsibility	The current rule includes "attempt" to post the property. The County does not have the power to put a sign on private property without the private owner's permission. Consequently, if permission is denied, County would also be unable to submit an "Affidavit of Posting" under 6.3.	add "attempt to"	As stated by OOL	Accepted- Issue Resolved
18	Page 25, lines 2-3	RULE 4.0 PUBLIC NOTICE	Requirement for a written motion	You may want to consider terminology here. A "motion" asks the Board to take an action. But some "communication" is only relaying information to the Board in writing without a request for Board action.	add "unless otherwise noted" after "Board Administrator" in Line 3.	Instances in which a communication is not a request for action are defined within the rules. The written motion rule originates from direct experience and serves to minimize the risk of impermissible ex parte communication.	Accepted- Issue Resolved
19	Page 26, line 2	RULE 5.0 MEETINGS AND HEARINGS	Witness participation process	The reason for the timing element in these lines is not clear to us. We understand that a testifying witness must adhere to the rules. What does it mean, if anything, to do so "before being called to testify"?	Strike lines 20-22 on p 25, p 26, lines 1-2	As stated by OOL	Accepted- Issue Resolved
20	Page 26, line 3	RULE 5.0 MEETINGS AND HEARINGS	Witness participation process	If this provision is meant to restate the current version of Code Section 2.204(f), language regarding registering to testify should be added. The current draft provides that an individual wishing to testify in opposition must do so before the petitioner's case ends, but an opponent will rarely, if ever, testify in the petitioner's case.	Language added to clarify process.	The updated procedure supports the requirement that a person or entity wishing to become a party to a matter must enter their appearance before a Petitioner's case in chief concludes.	Accepted- Issue Resolved
21	Page 27, line 22 to Page 28 line 1	RULE 5.0 MEETINGS AND HEARINGS	Negative effect of this phrase on record review in court.	If an appeal is taken from a Board decision and the action in this provision is related to an appeal point, the lack of any information in the record might make a bad record for the appeal. The Board might want to consider retaining the correspondence as evidence of lack of compliance and the basis for any subsequent action taken as a result, including not acting on the noncompliant correspondence per the rule.	Add language to read: "Written correspondence submitted to the Board without the required written certification of service shall immediately be rejected and returned by the Board Administrator. The Board shall not consider the communication"	Rule supports the prohibition of impermissible ex parte and is based on experiences when parties have tried to fill the record with unworn testimony outside of a public hearing.	Accepted- Issue Resolved
22	Page 29, lines 17-18	RULE 6.0 CASES	Jurisdiction of the Hearing Examiner	Currently this conflicts with Code section 16.302(a). For this rule to be sufficient, the Code section would have to be amended.	BOA recommends change to 16.302(a). See companion document.	Rule creates a single clear regulatory doctrine and deconflicts existing regulations which have resulted in judicial inefficiency and generalized confusion.	Accepted
23	Page 29, lines 19-20	RULE 6.0 CASES	Appealability of Board decisions	Recommend using same language that's in Charter Section 501(d). These rules cannot grant a right of appeal to court nor govern an appeal.	Add text to read: "A final decision and order of the Board of Appeals may be appealed to a court of law pursuant to Section 501(d) of the Howard County Charter.	As stated by OOL	Accepted- Issue Resolved
24	Page 32, lines 1-3	RULE 6.0 CASES	Alternate member Charter issue	Based on the language of Charter Section 501(a) concerning the Board's current structure, our opinion is that a Charter Amendment would be needed to make this change to the Board.	No change. A legal brief on the Board's position is being provided to Council for their review and ultimate decision.	The Board believes that legal precedent establishes a charter amendment is unnecessary to allow for an alternate member.	Disputed- Unresolved.
25	Page 32, lines 8-9	RULE 6.0 CASES	Member attendance	This rule might break down if all members sit the first night, then a vacancy occurs during the case, and the matter is heard over multiple nights.	No Change.	The Rules clarify that members who participate during the initial hearing, shall be the same members that participate through final disposition.	Accepted- Issue Resolved
26	Page 33, lines 4-7	RULE 8.0 ETHICAL SERVICE	Mandatory ethics reporting	We do not understand how the chair or the clerk would know whether a member fails to fully comply with the County Public Ethics Law. The Ethics Commission is solely responsible for such matters. A member's filings are in sole custody of the Ethics Commission and disclosure of them must comply with the Ethics Code and the Commission's rules. Regarding the reference to "June," the Board may want to pick a specific date in that month for clarity.	Strike lines 4-7. Remove reference to mandatory reporting of ethical concerns and record retention.	As stated by OOL	Accepted- Issue Resolved
27	Page 33, lines 8-14	RULE 8.0 ETHICAL SERVICE	Prohibition of Board members serving elsewhere.	We read these lines as proposals for the Council's consideration through appropriate legislative action.	No change.	Rule 8.0 (e) and (f) are based on the Board's experiences and originate from the intention to prohibit the appearance of conflict.	Accepted- Issue Resolved
28	Page 33, lines 15-21	RULE 8.0 ETHICAL SERVICE	Mandatory ethics reporting	See comments in row 23 re jurisdiction of Ethics Commission, as well as clarity of date in June.	Delete language related to mandatory reporting of ethical concerns and record retention.	As stated by OOL	Accepted- Issue Resolved
29	Page 41, lines 5-7	RULE 13. APPEARANCES BEFORE THE BOARD OF APPEALS	Characterization of the Board	The Board is an administrative agency under the legislative branch that performs a quasi-judicial function, but it is not a quasi-judicial body. The proceedings before the Board are governed by laws other than the ones listed, including the Code of Howard County Zoning Regulation and federal law (e.g., RLUIPA). The Board may want to use an encompassing term rather than a list, which could become incomplete with the passage of time	Strike "quasi-judicial body" in line 5, change to "administrative agency that performs quasi-judicial functions", add "all applicable law including" after "governed by" on line 6	As stated by OOL	Accepted- Issue Resolved

A	B	C	D	E	F	G	H
Item Number	ROP Page Reference ROP V1.17.25	Domain	Issue	OOL Comments	BOA Action	Rationale	OOL Response
30	Page 46, line 9	RULE 13. APPEARANCES BEFORE THE BOARD OF APPEALS	Use of term "legal advisor"	Discuss with OOL re terminology	No change.	The terms legal advisor describes a function and not a specific person or office. The terms does not conflict with other provisions of the Code.	Accepted- Issue Resolved
31	Page 48, line 7-9	RULE 18. DECISION AND ORDER: PROCESS AND ISSUANCE	Decision and Order timelines	Assuming all normal time is used, Law would provide a final to the Administrator on day 45, and the Administrator would provide to members by day 46, and members would have up to day 51 to review and sign. But the Administrator is required to deliver the signed final to parties before day 51, by day 48. Is the reference to the County Solicitor on page 38, lines 8-9 supposed to refer to the Board and the time reference is day 51 and not day 45?	Clarify by adding: "the fully signed" after "mail" on line 8	As stated by OOL	Accepted- Issue Resolved
32	Page 49, lines 21-23	RULE 21. REQUIRED TRAINING, RULE 22. REQUIRED EDUCATION	Board member training requirements	This requirement is within the purview of the Council to impose on members of the Board.	No change. Board recommends Code changes elsewhere. See companion document	For the many reason discussed at length over many work sessions; the rules supports the ongoing professional development of Board members and establishes reasonable minimum competency standards.	Accepted
33	Page 56, line 5	RULE 23. ELECTRONIC SUBMISSIONS	Language Clarification	Is the intent: The board administrator "shall keep the online docket current"?	No change.	Self explanatory in the context of the entire rule.	Accepted- Issue Resolved

HCCA/Stu Kohn Public Feedback

Item Number	ROP Rough Draft Section	Proposed Change/Question	Status	BOA Action
1	Page 2, line 3	After "501" add "see Appendix A"	Rejected	
2	Page 2, line 4	After "code" add "see Appendix B"	Rejected	
3	Page 3, line 6 – definitions moved up.	Add "Reference Appendix C for definitions relating to this document."	Rejected	
4	Page 9, line 22 – definitions moved up	Add "for a period of 5 years" after the word "meetings"	Rejected	
5	Page 10, lines 1-22 and page 11, lines 1-12	Question: what is the rationale for proposing "alternate" members", why is it needed and the advantage of such members?	Answered, no action	
6	Page 11, lines 11-12 – this was corrected in this version	Move 2.1.4 to separate line (corrected in 1.17.25 document)	Accepted	
7	Page 12, line 16	Delete "at least"	Rejected	
8	Page 15, line 6 – shown as "1)" under letter E.	Move 5.1 to a separate line	Accepted	
9	Page 15, line 7	after the word "issues" add "only whenever a member of the Board inquires"	Rejected	
10	Page 16, line 8	strike "contemplate when determining", change to "determine"	Rejected	
11	Page 16, line 14	Question: why is the Hearing Examiner mentioned?	Answered, left "Hearing Examiner" in	
12	Page 16, line 15	add a period after the word "used"	Accepted	
13	Page 16, lines 18-19	Question: Where is the "Board's Rules of Procedure Appendix" found in this document?	Answered	
14	Page 17, line 9	<u>Delete the words "only during" and replace with "at least two weeks prior to any" After the word "hearing" and the words "posted to the Board of Appeals website."</u>	Rejected	
15	Page 19, line 3	Question: why 37 days?	Answered, no action	
16	Page 19, line 17	Question: what two newspapers would you advertise?	Answered, no action	
17	Page 20, line 6	After the word "the" add the word "signage on the"	Rejected	
18	Page 21, lines 13-14	Question: where is the "Board of Appeals Rules Appendix" found in this document?	Answered	Board agreed to strike language after hyperlink
19	Page 22, line 3	Question: where is the "Board of Appeals Rules Appendix" found in this document?	Answered	Board agreed to strike language after hyperlink
20	Page 22, lines 19	Change the word "may elect to" to "shall"	Accepted	
21	Page 23, line 15	delete "Hearing Examiner"	Accepted	
22	Page 23, line 21	delete "24 hours" and change to "two weeks"	Rejected	
23	Page 25, lines 1-3	Question: what is the penalty if the "Ex Parte Prohibition" is not followed?	Answered	
24	Page 25, lines 9-10	Don't understand the meaning of "Quarterly meetings"	Answered	

HCCA/Stu Kohn Public Feedback

Item Number	ROP Rough Draft Section	Proposed Change/Question	Status	BOA Action
25	Page 25, line 20	place a „,“ comma after the word “Respondent” – delete the word “and” after the word “ witness(es)” add “or any opposition”	Accept, with changes	After “and” insert “any witness”, strike “supporting”
26	Page 26, lines 1-2	delete these two lines as this edit should apply to all parties	Accept, with changes	Strike “opposing a petition who wishes”, change to “Wishing”
27	Page 26, line 7	add a period (.) after the word “recessed” and delete “unless a continuation date was previously noticed”	Rejected	Capitalize “Official”
28	Page 26, lines 7-8	Don’t understand “It is unnecessary to repost a property following the completion of an initial session”	Answered	
29	Page 28, line 20	The two main categories mentioned are not described.	Rejected	Further described in the Rules (Section C and D)
30	Page 28, line 21	The two subcategories are not defined.	Rejected	same response
31	Page 30, line 14	Define “administrative official”	Rejected	already defined in the Rules
32	Page 30, line 15	Question: what are the “two subcategories”?	Answered	See above
33	Page 31, line 17	after the word “person” add the words “or virtually”	Reject	
34	Page 34, lines 5-7	The cost of the transcript should be defined as “x” per page.	Reject	
35	Page 35, lines 4-5	Question: What does this mean?	Answered	
36	Page 35, line 16	Question: Who is the “Presiding official?” It needs to be defined in the Appendix under Definitions.	Reject	Already defined/self-explanatory. Capitalize
37	Page 35, lines 19-20	Question: by remaining seated how does the party provide 10 hard copies to the Board Administrator?	Answered	
38	Page 35, line 21	Delete “are encouraged” and add “shall”	Reject	
39	Page 37, line 14	Change “may” to “shall”, Delete “any time after 10 business days and replace with “immediately or rule at the next hearing”	Reject	Some cases don’t require a response from BOA
40	Page 37, line 20	add “The Board shall not hear any appeals of motions derived from the Hearing Examiner until the final decision of any case heard by the BoA is finalized with a Decision and Order by the Hearing Examiner.”	Reject	request is unlawful
41	Page 37, line 23	delete the word “or” and change to “and”	Reject	
42	Page 38, line 13-14	change “Presiding Official” to “Chairperson”	Reject	Capitalize “Presiding Official”
43	Page 38, line 18	after the word “independently” change to “with the aforementioned rights as the spokesperson.”	Reject	
44	Page 39, line 6 – Rule 13 Subpoenas	Comment: Like that you took our suggestion about not allowing the filing of subpoenas - 21 days before the Hearing and 14 days to issue as stated in the previous Rules of Procedure.	Answered	
45	Page 39, lines 13-14	Question: where is the Appendix found in these Rules?	Answered	
46	Page 40, lines 7-8	Question: where is the Appendix found in these Rules?	Answered	
47	Page 40, line 13	change “may” to “shall”	Reject	
48	Page 40, line 17	<u>“Presiding Official” needs to be defined.</u>	Reject	Capitalize “Presiding Official”
49	Page 40, line 21	change “may” to “shall”	Reject	
50	Page 41, lines 17-18	“Presiding Official” needs to be defined.	Reject	Capitalize “Presiding Official”

HCCA/Stu Kohn Public Feedback

Item Number	ROP Rough Draft Section	Proposed Change/Question	Status	BOA Action
51	Page 42, line 1	after the word "has" add "been sworn in via the Oath as described in Rule 15," of this document	Reject	Can't swear in someone who is not a witness.
52	Page 42, lines 10 and 11	Should be in reverse order	Partial accept, with changes	Delete "by opposing parties"
53	Page 42, line 14	after the word "Solicitor" add "only when asked by a Board member for clarity are requesting legal advice.	Reject	
54	Page 43, line 8	after the word "Appeals" add "closes the case and"	Reject	
55	Page 45, line 15	change the word "may" to "shall"	Reject	
56	Page 45, line 17	change the word "may" to "shall"	Reject	
57	Page 47, lines 18-21, and Page 48, lines 1-6	Question: why should an "Extension" be permitted?	Answered	Rule currently exists
58	Page 48, line 22	after the words "file a" add "written"	Reject	
59	Page 51, line 1 – move to line 19 on page 50 to alphabetize	move "1.4 Authorized Instructor" after line 6 to alphabetize	Accept	
60	Page 51, lines 10-11	Question: where is the appendix found in this document?	Answered	
61	Page 53, lines 18-23, and Page 54, lines 1-6 – sub-sections 1-4 in this document	sub-section 1.1 thru 1.4 need to be alphabetized.	Accepted	
62	Page 54, lines 7-14	Question: why would automated filing be unavailable?	Answered	Not jurisdiction of BOA, DTCS controls.
63	Page 55, line 16	Question: why "no further description"?	Answered	
64	Page 55, line 23	change "as soon as practicable" to a specific time period.	Reject	
65	Definitions Section – start on Page 3, line 6 and continue through Page 9, line 13	Terms in Definition section need to be alphabetized.	Accept	

Chris Alleva Public Feedback						
Item Number	ROP Section	Type of Comment	Proposal	Status	BOA Response	
1	Page 2, line 19	Revision	add "including the Howard County Administrative procedures act" after Howard County	Reject		
2	Page 3, lines 19-20	Comment	This defintion adds substantiave reasons, what is an injustice? It may not be a mistake.	Reject		
3	Page 3, line 22	Comment	Need to address standing of parties	Reject		
4	Page 4, lines 11-16	Comment	Good add		Addressed	
5	Page 7, between lines 14 and 15	New Definition	Proposed new definition of "Opposition Case"		Reject	
6	Page 7, Line 17	Comment	Need to define gaining party status		Reject	
7	Page 26, line 2	Comment	Opposition case standing?		Reject	
8	Page 27, line 22	Revision	add "of service" after certification		Accept	
9	Page 29, lines 15-18	Comment	Section 16.302b needs to be amended (same comment as OOL)		Resolved	
10	Page 30, lines 3-11	Comment	Section 16.302b needs to be amended, Interlocutory appeals of Hearing Examiner decisions on motions are not prohibited		Reject	
11	Page 32, lines 8-10	Comment	Need to add attached language (what attached language?)		Reject	
12	Page 32, line 12	Comment	Title is not descriptive		Reject	
13	Page 34, lines 2-4	Comment	Electronic video recordings are considered the official record		No action	
14	Page 34, line 23	Comment	Expert testimony should not be recognized because it prejudices the hearings		No action	
15	Page 37, after line 19	New Text	add the following: "D. The Board shall hear all motions and memorialize their decision in a written order with a detailed summary the motion and the opposition motion, and the relevant law in support of the decision. "		Reject	
16	Page 37, lines 22-23	Comment	Need procedure to establish standing at the outset. Need to fix error in County Code re: 16.100. Need to establish rules for intervenors.		Reject	
17	Page 42, line 9	Revision	add "into the record" after "official documents"		Reject	
18	Page 42, lines 13-14	Question	Why is the County Solicitor permitted to cross-examine?		Answered	need to get clarity, legal advisor
19	Page 43, line 5	Revision	strike "one of a" after "proof"		Reject	
20	Page 43, line 8-9	Revision	insert "on the record" after "deliberate"		Reject	
21	Page 48, after line 11	New Text	add the following: "c. Board administrator shall index all Decisions and Orders"		Reject	

Joel Hurewitz Public Feedback

Item Number	ROP Section	Type of Feedback	Proposal	Status	BOA Response
1	Definitions	Comment	Why were definitions put in front? Definitions should be alphabetized	Accept/resolved	
2	Page 3, line 9	Comment	Board should only deal with land use appeals, why have this definition?	Reject	
3	Page 3, lines 12-13	Revision	Over-italicized	Corrected during public hearing	
4	Page 4, lines 11-16	Comment	Alternate members not authorized by the Code, same sufficiency concerns as OOL	addressed	
5	Page 4, line 22-23	Comment	This term is defined in the Charter, why define it here?	Answered	
6	Page 6, line 10	Revision	Ex parte definition should be the same as that of Zoning Board	Reject	
7	Page 7, line 10	Revision	Majority vote should be three-fifths	Error was fixed during 1/30/25 public hearing	
8	page 9, line 3	Comment	Suggest rewording that definition or eliminating definition	Reject	
9	Alternate Members Section p 10 lines 1-22 to p 11, lines 1-12	Comment	Same sufficiency concerns as OOL, not authorized by Code	Addressed	
10	Page 12, lines 15-21	Comment	examples of good cause not defined	Reject	
11	Page 13, lines 3-7	Comment	concern with record retention?	Answered	
12	Page 15, line 15	Revision	needs to be semi-colon, not a period	Corrected during public hearing	
13	Page 23, line 21	Revision	24 hours to have agenda available inconsistent with Charter/Code, should be 3 days before	Reject	
14	Page 25, lines 1-3	Comment	Wrong definition of ex parte, it's a "useless phrase"	Addressed	
15	Page 26, line 15	Revision	#3 is too big, font needs revising	Corrected during public hearing	
16	Page 26, lines 18-21	Revision	suggest giving an accident as example of compelling circumstances	Reject	
17	Page 27, line 2	Comment	What is meant by "another jurisdiction"? Not clear	Answered	
18	Page 28, line 21	Comment/Question	what are the "distinct subcategories"?	Addressed	
19	Page 29, line 19	Comment/Question	Which "Court of Law"? The Circuit Court? Specify which court	Addressed	
20	Page 30, line 5	Comment/Question	same question about Court of Law	Addressed	
21	Page 31, lines 6-15	Comment	BOA doesn't deal with non land use appeals, legal sufficiency concern	Reject	
22	Page 31, line 18	Clarification	flip between "Chairperson" and "Presiding official" here and throughout document	addressed	
23	Page 33, lines 4-7	Comment	this is the purview of the Ethics Commission, not the BOA	Addressed	
24	Page 34, lines 10-16	Comment	Does this include videos or large books? Confused on the difference between reports vs technical reports	Answered	Yes, but depends on each case
25	Page 35, lines 19-20	Comment	conflicts with previous section (Rule 9A) about reports, number of hard copies	Accept	Change number of copies to 8 in Rule 9A and in this section and throughout
26	Page 36, lines 15-19	Comment	why is this section necessary?	Addressed	Change 21 days to 14 days (line 18)
27	Page 37, lines 15-16	Comment	suggest re-examining inconsistency between "days" and "business days"	reject	
28	Page 37, line 18	Comment	what is "block font"?	Answered	
29	Page 38, lines 13-18	Comment	don't agree with this section, should only be a licensed attorney able to do this.	reject	
30	Page 39, line 22	Comment	other example of where "Chairperson" is used instead of "Presiding official"	addressed	

Joel Hurewitz Public Feedback

Item Number	ROP Section	Type of Feedback	Proposal	Status	BOA Response
31	Page 40, line 22	Comment	Specify which "Court"	Addressed	
32	Page 42, line 16	Comment	what about "re-re-cross" and "re-re-direct"	Reject	Not necessary
33	Page 46, lines 12-13	Question	what if DPZ is not involved in a case?	Answered	DPZ is custodian
34	Page 52, line 9	Question	why require this training?	Answered	
35	Page 53, line 15	Question	why have electronic submissions section at the end?	Answered	
36	Page 55, line 23	Revision	hyperlink missing	Corrected during public hearing	
37	Page 56, line 5	Question	what is meant by "currency"?	Addressed	Change to "currentness"

Citation	Code	Rationale	Reference
TITLE 2 - ADMINISTRATIVE PROCEDURE			
SUBTITLE 2. - RULES OF PROCEDURE OF THE BOARD OF APPEALS		* Recommend relocating the new Board of Appeals Rule of Practice and Procedure to from this subtitle, to a new subtitle 3.	
TITLE 16 - PLANNING, ZONING AND SUBDIVISIONS AND LAND DEVELOPMENT REGULATIONS			
SUBTITLE 3. BOARD OF APPEALS		* Recommend relocating this section to Title 2-Administrative Procedures; Subtitle 2-Board of Appeals.	
Sec. 16.301. Powers.	(d) To hear and decide citations issued, under title 16 ; subtitle 16 of this title of the Howard County Code , for a violation of the subdivision and land development regulations set forth in subtitle 1 of this title or the Howard County Zoning Regulations.	<p>* The following rationale applies to nearly all of the subsequent code change recommendations:</p> <p>* These updates are designed to preserve the integrity and clarity of the code while aligning it with recent modifications. Crucially, the changes will reduce fragmentation by establishing a more cohesive framework that evolves consistently over time. As specific sections of the code are updated, the revisions will help mitigate unintended ripple effects that often impact other, seemingly unrelated provisions—thereby reducing the risk of overlooked, outdated elements that create conflict or ambiguity. This forward-looking approach ensures that future code updates are not only more efficient but also more sustainable and aligned with government-wide practices.</p>	

Sec. 16.301A- Training.	<p>Newly appointed members of the Howard County Board of Appeals shall, within six months of their appointment, complete the following:</p> <p>(a) Review materials from publicly offered planning courses designed by the Howard County Department of Planning and Zoning that educate residents on how the planning and land development process works; complete in-person or virtual training if such courses are offered and coincide with the requirement period; and</p> <p>(b) A publicly offered education course designed by the Maryland Department of Planning that reviews certain aspects of land use planning.</p>	<p>* Training requirements for BOA members are currently fragmented within existing policy, practice, and Code. Given the comprehensive training and education standards outlined in the proposed Rules of Procedure (ROP), this language is now redundant and no longer necessary. All requirements are proposed in a single codified section to minimize inconsistency and incompatibility.</p>	<p>Proposed Rule 21 & 22</p>
Sec. 16.302- Jurisdiction of Hearing Examiner.	<p>(a) Except as provided in subsections (b) and (c), wherever in this Code or the zoning regulations a matter is authorized to be heard and decided by the Board of Appeals, the matter will first be heard and decided by a Hearing Examiner.</p> <p>(b) Wherever in this Code or the zoning regulations a person is authorized to appeal a decision made by an administrative agency after an opportunity for a contested case hearing, the appeal will be heard and decided by the Board.</p> <p>(c) The Board will hear and decide a case if the Hearing Examiner position is vacant or the Board determines that the Hearing Examiner is unable to hear the case because of a conflict of interest or other disqualification.</p> <p>(d) If the Board hears a petition for a conditional use, nonresidential variance, or extension, enlargement or alteration of a nonconforming use under the conditions of subsection (c), then the Board will not make a final decision on the case until it has considered the report of the Planning Board.</p>	<p>* This language is redundant and no longer necessary. ROP include delegated authority language similar to intent of 16.203A- HCZR for Zoning Bd HE and R1.02 of the Alcoholic Beverage Hearing Board.</p> <p>* Strike part (c) as unnecessary. Last adopted as CB49-2001, the Planning Board report was required before DPZ issued TSRs with established standards. However, despite the TSR practice and requirement, the language in existing code was never updated to remove the Planning Bd reference. Since the Planning Bd report no longer serves a useful purpose or supports the interest of justice, it should be removed. In practice the Planning Board has long stopped preparing and submitting the reports included in the section.</p>	<p>Proposed Rule 3, 5, 6,</p>

<p>Sec. 16.303. Hearing examiner procedures.</p>	<p>(a) Except for a citation issued under subtitle 16 of this title, a hearing conducted by a Hearing Examiner will comply with the notice and advertising requirements of section 2.203 of this Code, as amended.</p> <p>(b) A hearing conducted by a Hearing Examiner will be held at such place and time as determined by the Hearing Examiner. The Hearing Examiner shall be prohibited from holding meetings which include an opportunity for public testimony on any day on which Rosh Hashanah, Yom Kippur, Eid Ul Fitr or Eid Ul Adha is observed.</p> <p>(c) The County Solicitor will provide legal advice and assistance to the Hearing Examiner as requested.</p> <p>(d) The Hearing Examiner will have the power to issue subpoenas to compel the attendance of witnesses and the production of documents and to administer oaths to witnesses.</p> <p>(e) Unless otherwise provided by law, the burden of proof in a case heard by a Hearing Examiner will be:</p> <ol style="list-style-type: none"> (1) The burden of proof set forth in subsection 2.209(e) of the Code, as amended, except as provided in paragraph (2); (2) For any case coming before the Hearing Examiner as an appeal of an administrative decision, the burden of proof set forth in subsection 2.210(a)(4) of the Code, as amended. 	<p>* This language is redundant and no longer necessary. All requirements have been located in a single proposed section of the code to minimize inconsistency and incompatibility.</p>	<p>Proposed Rules: Applicability, 3, 5, 6</p>
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<p>Sec. 16.304. Appeal to Board of Appeals:</p> <p>(a) A person aggrieved by a decision of a Hearing Examiner may, within 30 days of the issuance of the decision, appeal the decision to the Board of Appeals. Unless the appeal is of a citation issued under subtitle 16 of this title, the Board will hear the appeal de novo in accordance with section 2.209 or subsection 2.210(a) of the Code, as amended, as applicable. The Board will hear the appeal of a citation issued under subtitle 16 of this title on the record in accordance with section 2.210(b) of this Code.</p> <p>(b) On filing of the appeal, the Hearing Examiner will promptly transmit the entire record or a certified copy of the record to the Board of Appeals and notify the parties of this action.</p> <p>(c) The person filing the appeal will bear the expense of providing notice of and advertising the hearing.</p>	<p>* This language is redundant and no longer necessary.</p>	<p>Proposed Rule: 6</p>	
<p>Sec. 16.305. Terms of service:</p>	<p>(b) While holding the position of Hearing Examiner, the Hearing Examiner may not represent any client involving land use in Howard County.</p>	<p>* This language is redundant and no longer necessary.</p>	<p>Proposed Rule: 1</p>

SUBTITLE 8. - DEPARTMENT OF PLANNING AND ZONING

<p>Sec. 16.801. - The Department of Planning and Zoning.</p>	<p>(c) <i>Duties and Responsibilities.</i> (7) Other zoning changes. The Department of Planning and Zoning shall receive all petitions applications related to zoning matters, such as conditional uses, variances, and nonconforming uses. The Department shall accept and review these applications and petitions and shall transmit them to the Hearing Examiner for the Board of Appeals. For all petitions applications related to variances in nonresidential districts, conditional uses, and extension, enlargement, or alteration of nonconforming uses, the Department shall prepare findings and analysis in a technical staff report and shall submit the petitions, findings and analysis to the Hearing Examiner for the Board of Appeals. The technical staff report shall be made available to the Hearing Examiner Board of Appeals and the general public at least two weeks prior to any required public meeting or hearing. If the Hearing Examiner approves a petition subject to an amendment or modification of the petition and the approval is appealed to the Board of Appeals, the Department will prepare and submit to the Board its findings and analysis concerning the amendment or modification in a technical staff report. The technical staff report shall be made available to the Board of Appeals and the general public at least two weeks prior to any required public meeting or hearing.</p>	<p>* Strike the word "petitions" and replace with the word "applications". Current use of the term petition creates confusion and incompatibility within the Code. The term Application more accurately defines the document submitted to DPZ and deconflicts. The only place the term petition is clearly defined is in Section 501 of the Charter and the ROP. The word has a specific contextual meaning which conflicts with how DPZ uses the term in HCZR. * Stricken language is redundant and no longer necessary.</p>	<p>Proposed Rule: 3</p>
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SUBTITLE 16 - ENFORCEMENT OF THE HOWARD COUNTY SUBDIVISION AND LAND DEVELOPMENT REGULATIONS AND THE ZONING REGULATIONS

<p>Sec. 16.1604. Authority of the Hearing Examiner; Board of Appeals.</p>	<p>Authority of the Board of Appeals.</p> <p>(a) <i>Authority</i>. The shall consider a citation issued under this subtitle for a violation of the subdivision and land development requirements set forth in subtitle 1 of this title or the Howard County Zoning Regulations.</p> <p>(b) <i>Board of Appeals</i>. The Hearing Examiner has all of the powers and authority of the Board of Appeals as set forth in:</p> <p>(1) Title 2, subtitle 2 of this Code; and</p> <p>(2) Subtitle 3 of this title, including the authority to issue subpoenas under section 16.303 of this title.</p>	<p>Proposed Rule: Applicability</p>
<p>Sec. 16.1605. Hearing.</p>	<p>(a) <i>Hearing Scheduled</i>. The Hearing Examiner shall schedule a hearing on a citation issued under section 16.1603 of this subtitle if:</p> <p>(1) A hearing is requested by the alleged violator or the Department; or</p> <p>(2) The alleged violator fails to pay any fine assessed in the citation.</p> <p>(b) <i>Procedures</i>. A hearing under this subtitle shall be held in accordance with the procedures set forth in subsection 2.210(a) and section 16.303 of this Code.</p> <p>(c) <i>Notice</i>. Notice of a hearing shall be served in the same manner as a notice of violation as set forth in subsection 16.1602(e) of this subtitle.</p> <p>(d) <i>Burden of Proof</i>. In an appeal of a citation issued under section 16.1603 of this subtitle, the burden of proof is on the County to show, by a preponderance of the evidence, that the alleged violator has violated the laws or regulations in question. However, it is the alleged violator's burden to provide all affirmative defenses, including the defense of nonconforming use.</p>	<p>* This language is redundant and no longer necessary, and in some cases directly conflicts with other Code provisions. * The regulation is contrary to current practice and is outdated. The BOA lacks an effective enforcement mechanism to support the mandate. Based on testimony received during the ROP amendment process from the DPZ and OOL officials, DPZ pursues violations through the court system to promote judicial efficiency and justice and does not seek relief from the BOA.</p> <p>Proposed Rule: 5 and 6</p>

<p>Sec. 16.1607. Final order.</p>	<p>(a) <i>Requirement to Issue</i> : After the conclusion of a hearing, the Hearing Examiner shall issue a written final and order.</p> <p>(b) <i>Contents</i> : A final order may include:</p> <p>(1) A requirement to abate a violation including a requirement to stop work or restore the property to a lawful condition;</p> <p>(2) A requirement to reimburse the County for any fees or costs incurred; and</p> <p>(3) A civil fine in accordance with section 16.1608 of this subtitle.</p>	<p>* This language is redundant and no longer necessary.</p>	<p>Proposed Rule 18.</p>
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<p>Sec. 16.1608. - Civil fines.</p>	<p>(a) <i>Amount of Fine</i> . A civil fine for a violation of the subdivision and land development regulations set forth in subtitle 1 of this title or the Howard County Zoning Regulations shall be a Class B offense as established Title 24 of the Code. \$250.00 or more per violation and shall not exceed \$500.00 per violation.</p> <p>(b) <i>Basis for Fine</i> . A fine imposed under this subtitle is within the discretion of the Hearing Examiner and may not be grossly disproportional to the gravity and severity of the offense.</p> <p>(c) <i>Payment of Fine</i> . All fines:</p> <p>(1) Are due and payable by the date indicated in the citation; and</p> <p>(2) Are payable to the Director of Finance of Howard County.</p> <p>(d) <i>Continuing Violations</i> . Each day that a violation continues after the issuance of a notice of violation or citation is a separate offense and an inspection that indicates that a violation continues to exist is <i>prima facie</i> proof of a continuing violation.</p> <p>(e) <i>Deferral or Conditions of Fine</i> . The Hearing Examiner Board of Appeals may suspend or defer assessment of a fine or may set conditions for the suspension or deferral of a fine.</p>	<p>* This language is redundant and no longer necessary.</p>	
<p>Sec. 16.1609. - Appeal to the Board of Appeals.</p>	<p>(a) <i>Appeal</i> . A final order issued by the Hearing Examiner may be appealed by the alleged violator to the Board of Appeals in accordance with section 16.304 of this title.</p> <p>(b) <i>Penalties Stayed</i> . If an alleged violator appeals the final order of the Hearing Examiner, the alleged violator may request the stay of any civil fine imposed by a final order pending the final resolution of an appeal.</p>		

<p>Sec. 16.1610. Security.</p>	<p>(a) <i>Security</i> . If a final order of the Hearing Examiner includes a civil fine and the order is appealed to the Board of Appeals, the alleged violator shall post security in the amount of the civil fine to the Director in a form acceptable to the Director.</p> <p>(b) <i>Refund of Security</i> . After all appeals are exhausted, if a civil fine:</p> <p>(1) Is reduced or vacated:</p> <p>(i) The security shall be reduced proportionately;</p> <p>(ii) Any surplus shall be returned to the alleged violator; and</p> <p>(iii) Any balance shall be used to satisfy the civil fine; or</p> <p>(2) Is not reduced or vacated, the security shall satisfy the fine assessed and accrue to the benefit of the County.</p>	<p>* The security provision under the authority of the Board of Appeals has been stricken from the proposed ROP based on current county practice and testimony received during the ROP amendment process.</p>	
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<p>Sec. 16.1611. - Failure to comply with a final order.</p>	<p>(a) <i>Failure to pay</i> . If a final order issued by a Hearing Examiner assesses a civil fine and the alleged violator does not pay the fine within the time required by the order, the Hearing Examiner shall certify to the Director of Finance the amount owed that shall:</p> <p>(1) Be a lien on the property on which the violation existed;</p> <p>(2) Accrue penalties at the same rate and in the same manner as the accrual of interest and penalties for unpaid real property taxes; and</p> <p>(3) Be collectible in the same manner as any civil money judgment or debt may be collected.</p> <p>(b) <i>County to Complete Work-Court Order</i> . If an alleged violator fails to comply with a final order or an order of the Board of Appeals issued under section 2.211 of this Code, the County may seek a court order authorizing entry onto the property to correct the violation in accordance with section 16.1612 of this subtitle.</p>	<p>* The security provision under the authority of the Board of Appeals has been stricken from the proposed ROP based on current county practice and testimony received during the ROP amendment process.</p> <p>* Strike language in (b) referencing a specific code to ensure compatibility with ROP and other codified requirements. Change will not impact intent.</p>	
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Sec. 16.1612. - County to secure compliance.	<p>(a) <i>Notice</i> . Notice that the County may undertake measures provided for in subsection (b) of this section shall be included in:</p> <p style="text-align: center;">(1) An order of abatement;</p> <p style="text-align: center;">(2) An injunction or other order for equitable relief issued by the court;</p> <p style="text-align: center;">(3) A final order issued by the Hearing Examiner; or—(4) An order of the Board of Appeals affirming or modifying a finding of the Hearing Examiner.</p> <p>(b) <i>County to Secure Compliance</i> . Subject to the notice requirements set forth in subsection (a) of this section, if an alleged violator fails to comply with an order to correct a violation within the time provided in the order, the County may seek a court order authorizing entry on to the property to correct the violation and may procure the performance of the work by County employees or by contract to correct the violation.</p>	<p>* The stricken language is proposed to be removed because it conflicts with language and intent of the proposed ROP.</p>	
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<p>Sec. 16.1613. - Removal of signs and posters.</p>	<p>(a) <i>Required</i> . Any sign or poster announcing a hearing or meeting and required to be placed by this title, title 2, or by the rules of practice and procedure of the Department Board of Appeals, Hearing Examiner, Zoning Board, Planning Board, Design Advisory Panel, Historic Preservation Commission or Cemetery Preservation Board, shall be removed by the applicant or petitioner as follows:</p> <p>(1) Except for resubmission community meeting posters, all signs or posters shall be removed by the 15th day following the conclusion of the meeting or hearing. (2) Presubmission community meeting posters shall be removed by the 15th day following the required minimum posting period.</p> <p>(b) The Department shall notify the applicant or petitioner placing the sign or poster of the removal requirements when a sign or poster is obtained from the Department.</p> <p>(c) Where the applicant or petitioner fails to remove the signs or posters, the Department may remove the signs or posters and assess a fee for each removal from each applicable property that shall be set by Resolution of the County Council.</p>	<p>* The recommendations include long standing grammatical error corrections and technical language adjustments to ensure consistence with other provisions of the Code.</p>	
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SUBTITLE 6. - HISTORIC PRESERVATION COMMISSION

<p>Sec. 16.606. - Powers of the Commission.</p>	<p>(2) The Commission may perform the following advisory functions:</p> <p>(i)Review applications for zoning text amendments, map amendments, conditional use, or variance approvals and make recommendations to the Zoning Board, Planning Board, County Council, or Hearing Examiner Board of Appeals for:</p>	<p>* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.</p>	
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TITLE 3 - BUILDINGS

SUBTITLE 1. - BUILDING CODE

<p>Sec. 3.101. - Amendments to the International Building Code, 2021 Edition</p>	<p>(38) Section 113 Board of Appeals.</p> <p>113.1 <i>Application for appeal</i> . Except for a notice of violation, a person may appeal the approval, denial, revocation, suspension, or extension of a permit to a hearing examiner of the Howard County Board of Appeals. An application for an appeal shall be based on a claim that this Code has been incorrectly interpreted, the provisions of this Code do not apply, or an equally good or better form of construction is proposed. A notice of violation may not be appealed.</p> <p>113.2 <i>Board of Appeals</i> . The Howard County Board of Appeals⁴ Hearing Examiner shall hear and decide appeals in accordance with the procedures set forth in title 16, subtitle 3 of the Howard County Code. Neither the Board of Appeals' Hearing Examiner nor the Board of Appeals shall not have the authority to waive requirements of this Code.</p>	<p>* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.</p>	
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SUBTITLE 2. - ELECTRICAL REGULATIONS

<p>Sec. 3.220. - Appeal of decision to revoke, deny, or suspend a permit.</p>	<p>(b) Within 30 days of the date of an order, a person aggrieved may appeal the order to suspend, revoke, or deny a permit to the Howard County Board of Appeals Hearing Examiner in accordance with the procedures set forth in the title 16, subtitle 3 of this Howard County Code.</p>	<p>* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.</p>	
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SUBTITLE 3. - PLUMBING AND GASFITTING REGULATIONS

<p>Sec. 3.304. - On-site utility contractor's license.</p>	<p>(3) Appeals. Within 30 days of the date of the decision, a person aggrieved by a decision of the authority having jurisdiction to revoke, deny, suspend or approve any on-site utility contractor's license may appeal the decision to the Howard County Board of Appeals Hearing Examiner pursuant to the procedures set forth in title 16, subtitle 3 of the Howard County Code.</p>	<p>* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.</p>	
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Sec. 3.305. - Permits.	(k) Appeals. Within 30 days of the date of the decision, a person aggrieved by a decision of the authority having jurisdiction to approve, suspend, revoke, extend, or deny a plumbing permit or a permit for on-site utility work may appeal that decision to the Board of Appeals Hearing Examiner pursuant to the procedures set forth in title 16, subtitle 3 of the Howard County Code.	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	
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SUBTITLE 7. - PROPERTY MAINTENANCE CODE FOR RENTAL HOUSING

Sec. 3.700. - Howard County Property Maintenance Code for Rental Housing.	(26) Subsection 112.6 Hearing. A person may appeal an order to take emergency measures to a Hearing Examiner of the Howard County Board of Appeals in accordance with the rules of procedure set forth in title 16, subtitle 3 of the Howard County Code.	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	
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TITLE 15 - NATURAL RESOURCES

Sec. 15.503. - Agricultural Preservation Board	(h) Duties and Responsibilities. The Board shall have the following duties: (3) For the Hearing Examiner, the Board shall review and make recommendations on commercial solar facility and other conditional uses sought on easements as provided in the Howard County Zoning Regulations.	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	
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TITLE 14 - LICENSES, PERMITS AND INSPECTIONS

Sec. 14.904. - Appeal.	Any aggrieved person may appeal a decision of the Director to revoke, deny, suspend, or approve a rental housing license under this subtitle to a Board of Appeals Hearing Examiner in accordance with title 2, subtitle 2 of the Howard County Code.	* The recommendation includes technical language adjustments to ensure consistency with other provisions of the Code.	
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BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on _____, 2025.

Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2025.

Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2025.

Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on October 20, 2025.


Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2025.

Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2025.

Michelle R. Harrod, Administrator to the County Council