

Charles County Board of Appeals Rules of Procedure

The Rules of Procedures of the Board of Appeals are supplementary to requirements set forth in the Charles County Code and Charles County Zoning Regulations, which provide additional procedural requirements.

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I. Basis of Authority.

The Charles County Board of Appeals is established under:

- A. The Maryland Land Use Article, §§ 4-301 through 4-306;
- B. Chapter 150 (Board of Appeals), §§ 150-1 through 150-3, Division 2 of the Charles County Code; and
- C. Article XXV (Board of Appeals), §§ 297-409 through 297-419, of the Charles County Zoning Regulations, as amended.

II. Definitions

- A. Administrative Appeal. This is an appeal of a final decision or order from a county official or the Planning Commission involving a land use or zoning case.
- B. Aggrieved Applicant. An aggrieved party who is an applicant in the case on appeal before the Board of Appeals.
- C. Aggrieved Party. Any person or persons jointly or severally aggrieved by any decision of a county official or the Planning Commission.
- D. Appellant. The party who files an administrative appeal to the Board of Appeal.
- E. Applicant. The party who submits the application for action before the Board.
- F. Days. Time limits are counted in calendar days, not business days.
- G. De Novo Hearing. A hearing in which the procedures are the same as when the Board acts pursuant to its original jurisdiction.
- H. Docket. The case file for a matter before the Board. The docket encompasses all information about a particular case. Dockets are identified by a sequential number. Assigned docket numbers do not reset from year to year: They continue in a sequential manner.
- I. Non-Conforming Use. This occurs when a use of a property was allowed under previous zoning regulations but is no longer a permitted use as a result of a change in the zoning regulations or change in the zoning of the property.

- J. Opposition. The organized party or parties who appear before the Board in opposition to an applicant's case.
- K. Party. Parties to a specific case include the Applicant, and Opposition, and Appellants and Respondents in an administrative appeal.
- L. Person¹. An individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, limited liability company, or other entity.
- M. Special Exception². A grant of a specific use by the Board through a hearing process. Special exception uses are identified as such in the Zoning Regulations.
- N. Standing. Standing is required to be part of an opposition party or to ask questions of the applicant, opposition, or witnesses called to testify under oath. A person has standing in a particular case if that person satisfies any of the following requirements³.
- (1) a legal or financial stake in the case;
 - (2) will suffer some other articulable injury, unique to the person or a group of people in which the person is a member, that will be influenced by a decision in the case; or
 - (3) has some other articulable form of substantial interest in the case.
- O. Variance⁴. A modification to the requirements in the Zoning Regulations where, owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the zoning law would result in unnecessary hardship or practical difficulty, as specified in the zoning law.

¹ MD Land Use Code § 1-101(k)

² MD Land Use Code § 1-101(p)

³ Maryland State Law Library; *Frothingham v. Mellon*, 262 U.S. 447 (1923); *Sierra Club v. Morton*, 405 U.S. 727 (1972); *United States v. SCRAP*, 412 U.S. 669 (1973); *Havens Realty v. Coleman*, 455 U.S. 363 (1982); <https://law.justia.com/constitution/us/article-3/20-substantial-interest-standing.html>

⁴ MD Land Use Code § 1-101(s)

P. Witness. A person who is called by a party to the case to testify, under penalty of perjury, before the Board.

III. Organization

A. Membership & Member Responsibilities.

- (1) Members⁵. The Board of Appeals shall consist of five (5) voting members, and one alternate. These positions consist of the Chairperson; the Vice Chairperson; three (3) regular members; and one (1) alternate, who becomes eligible to vote upon the absence of any regular member.
 - (a) Chairperson. The Chairperson is elected by the members of the Board during the first meeting of each calendar year. The term of appointment of the Chairperson ends during the first meeting of the following calendar year. The Chairperson is responsible for:
 - (i) Scheduling hearings and meetings⁶;
 - (ii) Ruling on preliminary and procedural matters; and
 - (iii) Ruling on evidence and its admission to hearings.
 - (b) Vice Chairperson. The Vice Chairperson is elected in the same manner as the Chairperson and for the same term. The Vice Chairperson acts and has the authority of the Chairperson during the Chairperson's absence.
 - (c) Regular Members. These Board members may vote in any matter in which they were present for, or watched the video and reviewed the evidence of, as long as they are present during the vote. They shall attend all meetings as possible and will notify the Chairperson ahead of time if an absence is required.

⁵ Charles County Code § 150-1

⁶ MD Land Use Code § 4-303(a)(1)

- (d) Alternate Member. The alternate member must comply with all of the same rules as regular members. The alternate member may only vote in the absence of one or more regular members.
- (2) Staff. The Board of Appeals shall also have staff assigned by the county government to assist the Board of Appeals in carrying out its duties.
 - (a) The Clerk to the Board of Appeals (the “Clerk”). This person is appointed by the Zoning Officer. The duties of the Clerk are to provide administrative support to the Board, including, but not limited to:
 - (i) Attending all meetings and hearings of the Board of Appeals;
 - (ii) Scheduling hearings and meetings per the direction of the Chairperson;
 - (iii) Creating and maintaining a roster of all pending cases submitted to the Board of Appeals to include the current status, next steps, and relevant dates. The current roster shall be provided to the Chairperson and Vice Chairperson on a bi-weekly basis, and to other Board members as requested.
 - (iv) Preparation and transmission of the Agenda for any meeting or hearing after approval of the Agenda by the Chairperson.
 - (v) Ensuring proper notices are sent out in support of the Board’s operations;
 - (vi) Posting exhibits, notices, etc. to Board Docs or other designated electronic publishing system accessible by the public;
 - (vii) Creating and maintaining the official record of all proceedings;
 - (viii) Drafting minutes of meetings for adoption by the Board;
 - (ix) Taking custody of, handling, and storing all decisions, orders, exhibits, evidence, notes, and recordings;
 - (x) Distributing Decisions and Orders to the parties of a case;

- (xi) Preparing all required administrative documents (e.g. agendas, minutes of meetings); and
- (xii) Any other requirements set forth by the Chairperson
- (b) Zoning Representative. Assigned by the Zoning Officer, the duties of the Zoning Representative include:
 - (i) Attending all meetings and hearings of the Board of Appeals;
 - (ii) Liaison between the Zoning Officer and the Board; and
 - (iii) Provide the Zoning Officer's official position on, and interpretation of, the relevant regulations; ordinances; and policies, procedures, plans, and intentions as they relate to the Board's functions.
- (c) Legal Counsel. A legal counsel for the Board is appointed by the County Attorneys' Office. The appointed counsel may be from the County Attorneys' Office or be a privately practicing attorney of the Maryland State Bar. The duties of the legal counsel include:
 - (i) Attending all meetings and hearings of the Board of Appeals;
 - (ii) Providing legal advice to the Board;
 - (iii) Drafting Decisions and Orders in coordination with the Zoning Representative.
 - (iv) Drafting legal documents in support of Board operations; and
 - (v) Reviewing all official responses of complaints to or about the Board.

B. Term Limits⁷. Each term for voting Board members is limited to three years or the remainder of the current term if filling a vacated position. Members are limited to two consecutive full terms on the Board.

⁷ Charles County Code § 150-2

- C. Selection Process. Members of the Board are selected by the County Commissioners and serve a three-year term, unless filling a position that was vacated early. Upon completion of the term, the County Commissioners may authorize an additional term or appoint a new person to the position.
- D. Removal from the Board. The procedure to remove a member of the Board of Appeals is specified by Maryland Land Use Article § 4-302.
- E. Recusal of Board Members⁸. A member of the Board shall recuse himself or herself from participating in a matter in which the member may have a conflict of interest or an appearance of a conflict of interest.

IV. Responsibilities and Duties

- A. Compliance with State and Local Laws
 - (3) Code of Civility⁹. All Board members and staff shall comply with the County Code of Civility and shall conduct themselves at meetings and hearings in a fair, understanding, and gracious manner. The Board shall seek to be considerate of all individuals, attitudes, and differences of opinion involved in official Board business.
 - (4) Code of Ethics¹⁰. Board members are subject to and must comply with the County Code of Ethics. The Ethics Code requires annual submission of a Financial Statement.
 - (5) Open Meetings Act. All Board members shall complete the Open Meetings Act Training on the Maryland Attorney General's website, within six months of appointment to their position, and provide a copy of the certificate of completion to the Clerk.
 - (6) Required Education. All Board members shall complete the Board of Appeals Education Course on the Maryland Department of Planning website, within

⁸ MD Land Use Code § 4-304(b)

⁹ Adopted by Resolution No. 2012-70

¹⁰ Charles County Code § 170

six months of appointment to their position, and provide a copy of the certificate of completion to the Clerk.

- B. Ex Parte Communications. Communication with a Board member regarding a current or pending case of the Board's, outside of a scheduled hearing, is disallowed. If an ex-parte communication is conducted, it shall be revealed on the record at the next open meeting by the Board member and the reasoning for the communication shall be explained.
- C. Attendance. It shall be the duty of each member to attend all meetings and hearings. If unable to attend a specific meeting, the Board Member should notify the Chairperson and Clerk as soon as possible or at least one hour prior to the meeting.

V. Sessions and Hearings

- A. Scheduling of Meetings. The Board of Appeals will hold such sessions and hearings as may, from time to time, be scheduled by the Chairperson or his/her designee¹¹.
- B. Place and Time of Hearings.
 - (1) Hearings will be conducted in the Charles County Government Building located at 200 Baltimore Street, La Plata, MD, unless the Chairperson or designee deems it necessary to hold the meeting elsewhere on a case by case basis.
 - (2) Each calendar year, no later than the first meeting of December, the Board will approve a schedule of meeting dates and times for the next calendar year.
 - (3) Within 60 days of receipt of an application, the Zoning Officer shall send written notice of the time and date of the hearing to the applicant¹².

¹¹ MD Land Use Code § 4-303(a)(2)

¹² Zoning Regulations § 297-411(a)

- (4) Dates, times, and locations of hearings for specific dockets or cases will be communicated in writing to all parties involved at least 21 days prior to the meeting. This time period shall not be considered jurisdictional.
- C. Record of Attendance. The Clerk shall record the attendance of all members of the Board at each meeting. This attendance record shall be placed into the minutes of the meeting.
- D. Record of Meetings¹³.
- (1) The Clerk shall create and maintain written record showing the vote of each member on each question or the member's absence or failure to vote. Media Services of Charles County shall create and maintain an audio/visual recording of all proceedings. The recording is a public record.
 - (2) Transcriptions are not required unless requested by a party to the case. All associated costs of a transcript shall be borne by the requesting party unless the requesting party is the Charles County government or a member of the Board. Payments are to be made to the Clerk or the Clerk's designee.
- E. Subpoena Power.
- (1) Authority. The Chairperson may compel testimony via issuance of a subpoena to persons at the request of any party to a case, current or pending; or at the request of the majority of the Board¹⁴.
 - (2) Issuance. The subpoena may require that the person(s) bring documents or other evidence relevant to the case for which the subpoena is requested.
 - (3) The party requesting the subpoena shall make the request in writing and shall be responsible for the service of the subpoena and all costs and fees associated with the service of the subpoena.

¹³ MD Land Use Code § 4-304(c)

¹⁴ MD Land Use Code § 4-303(a)(2)

VI. Public Attendance

- A. Notification. Proper notification must be provided to the public prior to the discussion of any docket or non-administrative matter in a manner consistent with the requirements outlined in the Zoning Regulations.
- B. Open Sessions¹⁵.
- (1) All hearings shall be held in open public session.
 - (2) All evidence shall be presented to the Board during open session.
 - (3) The general public is invited and encouraged to attend Board meetings. All persons attending a meeting must maintain order and refrain from disturbing the orderly process of the meeting. In the event of a disruption, the Chairperson has the discretion to clear the room of offending persons or declare a recess.
 - (4) All persons wanting to comment before the Board, whether for administrative matters or for a specific case, shall sign in the log prepared and held by the Clerk.
- C. Closed Sessions.
- (1) The Board may meet in a closed session for any reason specified in the Maryland Open Meetings Act which includes, but is not limited to;
 - (a) Consult with counsel to obtain legal advice¹⁶; and
 - (b) Consult with counsel about pending litigation¹⁷.
 - (2) Procedure.
 - (a) Before Closing a meeting: The Chairperson shall make a written statement of the reason(s) for closing the meeting (Closing Statement).

¹⁵ MD Land Use Code § 4-303(a)(3)

¹⁶ Open Meetings Act § 3-305(b)(7)

¹⁷ Open Meetings Act § 3-305(b)(8)

- (i) In the Closing Statement, the Chairperson must disclose the "topic to be discussed" and the statutory exception relied upon as authority for closing the meeting.
 - (ii) Second, Chairperson must conduct a recorded vote on a motion to close the meeting to the public. The recorded vote must specify each member's vote.
 - (iii) The closing statement must be kept for one year; are considered a matter of public record; and must be available for inspection, at the time of the closing, by members of the public who so request the document.
- (b) During the Closed Meeting: All members and participants of a closed meeting shall confine the discussion to the topics and the scope of the exception disclosed on the statement. If the discussion strays outside of the topics and exceptions claimed beforehand in the Closing Statement, the Chairperson must stop the discussion so that it may be conducted in the open.
- (i) No party to a case shall be heard by the Board in a closed session.
 - (ii) No evidence, argument, or other matter from a party to a case shall be received by the Board in a closed session.
- (c) After the Closed Meeting: At the conclusion of the closed meeting the Board will resume the case in an open meeting. After a public body has met in a closed session, it must include a summary of the session in the minutes of its next public meeting.
- (d) Closed Meeting Minutes: The Clerk to the Board shall record and maintain closed session minutes. The written minutes must reflect each item the Board considered, persons present, and any actions taken. Closed session minutes are sealed and are not available for public inspection.

- (e) Disclosure: After the Board holds a closed meeting, the Board shall include a summary of the session in the minutes of its next public meeting. The summary must include:
 - (i) The time, place and purpose of the closed session;
 - (ii) Each member's vote on the motion to close the session;
 - (iii) The statutory exception claimed as a basis for excluding the public; and
 - (iv) A list of the topics discussed, persons present, and actions taken in the closed session. However, the Board is only required to disclose as much information as it can without compromising the confidentiality of the session. Closed session minutes do not substitute for the post session disclosures.
- (3) No minutes from a closed meeting will be released except by:
 - (a) A request from the Maryland Open Meetings Compliance Board when investigating a complaint regarding a closed session.
 - (b) A court order or subpoena that has been reviewed and validated by the Board's legal counsel.
 - (c) A vote by the majority of the Board to allow the release of the information. This vote must be held in an open meeting.

D. Appearances before the Board.

- (1) Parties to the Case.
 - (a) Any individual who is a party to a proceeding before the Board may appear on his/her own behalf.
 - (b) Any member of a partnership may appear as the representative of the partnership if it is a party to the case.
 - (c) A duly authorized representative of a corporation, trust, or an association may appear as representing said body if it is a party to the case.

- (d) A duly authorized representative or an employee of any political subdivision, body, or department may represent the same in any proceedings before the Board.
- (2) Opposition Party.
 - (a) Any person who has standing and is in opposition to an application may participate in a hearing as an Opposition Party.
 - (b) Opposition Parties formally recognized by the Chairperson shall be given the opportunity to present testimony and evidence and cross-examine persons who testify.
 - (c) If there are multiple Opposition Parties, they are encouraged to choose a single person to represent them during the proceedings.
 - (3) Attorney Representation. Any party may be represented, at that party's cost, in any proceeding by an attorney at law admitted to practice before the Court of Appeals of Maryland.
 - (4) Civic or Improvement Organizations.
 - (a) Before any person may testify on behalf of any civic or citizens association, he/she must state the number of members and the geographical limits of the association.
 - (b) Before any such person can testify as a representative, that person must prove he/she is authorized to speak on behalf of, and present the views of, the civic or improvement association.
 - (c) Such authorization may consist of a resolution duly adopted by the association, signed by the president or attested by the secretary presented at or before the hearing.
 - (5) Public Comments. Comments on the Operations of the Board. Public comments on the operations of the Board, excluding comments on any cases scheduled to be heard during the current meeting, are permitted and encouraged during the administrative matters portion of the meeting.

- (6) Counsel.
 - (a) At any time, the Board may cease any action in a case and request advice of the counsel.
 - (b) The advice solicited may be presented in Open or Closed Session, depending upon the subject-matter. The Board will endeavor to obtain the counsel in an Open Meeting environment whenever possible.
 - (c) The Board's counsel is for the Board's use only and no party, witness, attestant, or other person not a member of the Board may comment to or ask questions of the Board's counsel without first receiving permission of the Chairperson.
- (7) Zoning Officer. The Zoning Officer shall provide a written report to the Board of Appeals at least 14 days prior to the scheduled public hearing. The report shall contain preliminary findings as to the extent the application conforms to the requirements of the Zoning Regulations. The failure to provide a report or to meet the time limitations herein shall not affect the authority of the Board to hold the public hearing at its scheduled date and time. The Zoning Officer, or designee, who authored the staff report shall be present for each hearing.

VII. Types of Hearings¹⁸

- A. Special Exceptions. Applications for special exception uses and enlargements, extensions, modifications for, and revocations of special exceptions, as provided in Zoning Regulations.
- B. Variances. Applications for variances, as provided in Zoning Regulations.
- C. Non-Conforming Use. Applications for the extension or enlargement of a nonconforming situation, as provided in Zoning Regulations.
- D. Administrative Appeals. Appeals from any final order, decision, requirement or interpretation made by an administrative official in the enforcement of any matter

¹⁸ Zoning Regulations § 297-409(a)

authorized by the Maryland Code, Land Use and as provided in Zoning Regulations.

- (1) Appeals from any final order or decision of an Administrative Official or the Planning Commission may be taken to the Board by any person aggrieved as specified within.
- (2) Generally, a person aggrieved by an administrative decision is one whose personal or property rights are adversely affected by the decision. An adjoining, confronting, or nearby owner is deemed to be aggrieved. A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved.
- (3) An Appeal is initiated by filing a written Notice of Appeal with the Zoning Officer and the Board, specifying the grounds of the Appeal, within thirty (30) days after the date of the administrative decision from which the Appeal is made, unless the ordinance applicable to the agency from which the Appeal is taken specifies a different time.
- (4) In the case of Appeals from a Planning Commission decision, the mere filing of a request for reconsideration of a decision prescribed in the Planning Commission rules of procedure does not stay the 30-day time frame for filing an Appeal with the Board of Appeals. If the Planning Commission votes to reconsider the decision, then the appeal time will be taken from the date granting or denying the reconsideration.
- (5) The date and time of filing of the appeal shall be entered on the notice by the Zoning Officer.
- (6) The Board shall not hear appeals of decisions made by the Charles County Commissioners.

VIII. Applications

A. Initial Applications.

- (1) The form and content of applications shall normally be prescribed by the Office of Planning and Growth Management (PGM);
- (2) Application forms will be made available to the public through PGM.
- (3) Plat Requirements. The required copies of a recorded plat, 18" by 24" in size, must show:
 - (a) The land for which the special exception, variance, or nonconforming use is sought, outlined in red, the bordering properties, streets and street names;
 - (b) Lot and block designations, if any;
 - (c) North point and scale;
 - (d) Site location or vicinity map;
 - (e) Adjacent property owners; and
 - (f) Any other pertinent information such as rendered drawings of building elevations and computer modeling and simulations.
- (4) If no recorded plat exists, the deed to the property shall be submitted.
- (5) Site Plan Requirements. The required copies of a site plan, 18" by 24" in size, must show:
 - (a) Ways of ingress and egress;
 - (b) Proposed screening and buffer zones;
 - (c) Existing and/or proposed streets; and
 - (d) Parking configuration.

B. Renewal Applications.

- (1) These applications require the same form and contents as original applications.

- (2) A renewal must be applied for prior to the expiration date stated in the original Decision and Order; however, the Board hearing need not occur prior to that expiration.
- (3) The expiration date of the original Decision and Order will be considered as extended until the renewal application is ruled upon.

IX. Notice to Public¹⁹

- A. **Mailing Notice.** Not less than 14 days prior to the hearing, the Applicant or the Applicant's agent shall mail via Certified Mail, Return Receipt Requested, a notice of the time, date, place, and nature of the public hearing, provided by the Clerk, to the owners of each property that is within a 200-foot radius of the property line that is the subject of the hearing. The Applicant shall file with the Zoning Officer an affidavit of mailing of such notice as an exhibit in the public hearing prior to 4:30 p.m. of the day of the hearing and in no case after the commencement of the hearing.
- B. **Sign Posting.** At least 14 days prior to the hearing, the Applicant shall erect signs provided by the Zoning Officer on the subject property. Such signs will be erected within ten (10) feet of the boundary line of such land that abuts every public road. If the property does not abut a public road, the sign must be posted at the nearest public road that provides access to the property. The signs shall be affixed to a rigid board and be maintained by the Applicant until a written Decision and Order is issued by the Board. The Applicant shall file with the Zoning Officer an affidavit certifying the posting of said signs as an exhibit in the public hearing prior to 4:30 p.m. of the day of the hearing and in no case after the commencement of the hearing.
- C. **Publication Notice.** In the case of a special exception; enlargement, extension, or modification of a Special Exception use; variance; extension or enlargement of any nonconforming situation; appeal; or reconsideration requesting the Board consider additional evidence, a notice containing the time and place of the public hearing,

¹⁹ Zoning Regulations § 297-411

and a summary of the proposed request shall be published in at least one (1) newspaper of general circulation in the jurisdiction once each week for two successive weeks, with the first such publication of notice appearing at least 15 days prior to the hearing.

- D. Notification Compliance. The responsibility of assuring compliance with the advertising, posting, and mailing requirements of this section shall be on the Applicant. Should a dispute arise as to whether there has been compliance with the advertising, posting, or mailing requirements of this section, it shall be the Applicant's burden to establish compliance was met. If the Board determines that the Applicant has made a good faith effort to comply with the requirements of this section, the Applicant shall be afforded a reasonable opportunity to correct the non-compliance. If the Board determines that the Applicant has not made a good faith effort to comply with the requirements of this section, the Board may dismiss the Petition.
- E. Exception. None of the notice requirements contained in this Section will be applicable to, or required for, hearings on administrative appeals from notices of violation of county laws and regulations, including the issuance of stop work orders or cease and desist orders.
- F. If the Appellant in an administrative appeal not involving a notice of violation of County laws and regulations cannot post the property because the Appellant does not own the property, the Appellant shall send a copy of the appeal application and written notification of the place, time and date of the hearing to the property owner and the owners of each property within a 200 foot radius of the property line that is the subject of the hearing and shall file an affidavit of written notification with the Board. The Appellant shall comply with all advertising requirements.

X. Fees

- A. A filing fee will be charged for the Board's processing of any appeal; special exception; enlargement, extension or modification of a special exception; variance; or extension or enlargement of any non-conforming situation.

- B. The appropriate filing fee will be established in the "Schedule of Fees and Charges" adopted by the County Commissioners.
- C. Fees will be paid by the Applicant at the time any application, petition, or Appeal is submitted. All checks should be made payable to "Charles County Commissioners". In all cases, the Applicant will be liable for the payment of all fees once the application has been processed and distributed for review by individuals and agencies.

XI. General Hearing Procedures

- A. Oath & Sworn (or Affirmed) Statements.
 - (1) All persons testifying before the Board shall be required to take an oath prior to giving testimony.
 - (2) The Chairperson shall administer the following Oath: "Do you swear or affirm, under penalty of perjury, that the testimony you are about to give is the truth?"
- B. Order of Presentation.
 - (1) The Chairman will provide an introduction of the case.
 - (2) The Zoning Officer's designee presents a brief summary of the Applicant's request; a presentation of maps illustrating the general location of the subject property, zoning, and relevant graphics and illustrations; and a summary that includes the Zoning Officer's recommendations to the Board for case resolution.
 - (3) Applicant's presentation.
 - (a) Summary of the request and supporting evidence or justification.
 - (b) Direct examination of witnesses.
 - (c) Cross examination of witnesses by the Opposition and Board Members.
 - (i) Normally, the cross-examination will be conducted by the Opposition or a spokesperson.

- (ii) Other persons desiring to question the Applicant's witness may do so; however, they must first be recognized by the Chairperson and be given leave to question the witness. Questioning will be conducted in a dignified manner. The Chairperson may stop the interrogatories if the person is verbally abusive or acts hostile to the witness.
 - (iii) Questions shall be germane to statements made by the witness during direct examination and shall be interrogatory in nature, not argumentative and not contain any reference to personality or motives. The Chairperson may rule on the suitability of a question. It is the Chairperson's discretion to allow verbal questioning or require questions or cross-examination be reduced to writing and asked by the Board's legal counsel or any other individual designated by the Chairperson.
 - (iv) The Chairperson may impose reasonable limitations upon cross-examination.
- (d) Re-direct examination of Applicant's witnesses. Questions during redirect must be related to information obtained during the cross examination.
 - (e) Re-cross examination of Applicant's witnesses. Re-cross may only be performed with the consent of the Chairperson. The re-cross questions can only pertain to information presented during re-direct.
 - (f) Questions from the Board. The Board question and answer periods do not count against the case presentation time limits. Board members are not limited to this portion of the case to ask questions. Although the Board will endeavor to allow uninterrupted testimony by a witness, the testimony may be interrupted by the Board in an effort to clarify or understand a point being made or to question a fact being presented that should be addressed right away.

- (4) Opposition's presentation. The same rules apply here that apply to the Applicant's presentation.
 - (a) Summary of the issues and concerns, and any supporting evidence or justification.
 - (b) Direct examination of Opposition's witnesses.
 - (c) Cross examination of Opposition's witness by Applicant and by any Board Members.
 - (d) Re-direct examination of Opposition's witnesses.
 - (e) Re-cross examination of Opposition's witnesses (if approved by the Chairperson).
 - (f) Questions from the Board.
- (5) Public Comments.
- (6) Board questions. The Board members may ask questions of any of the parties pertaining to the evidence and testimony previously provided. The Board members may also ask for clarification of facts presented to the Board.
- (7) Rebuttal by the Applicant. The Applicant may present evidence to rebut any evidence introduced by the Opposition. No new evidence unrelated to Opposition's presentation may be introduced at this time.
- (8) Summation by Opposition.
- (9) Summation by Applicant.
- (10) Closing of the Record. After summations are completed, the Chairperson shall close the record, which will preclude any additional direct interaction with the parties or the public. The Board does have the authority to re-open the record to receive further information it deems pertinent to the case.
- (11) Work Session. Upon the closing of the record, the Board shall deliberate. Board members will discuss among themselves the merits of the case, including evidence, testimony, and law related to the case.

(12) Decision of the Board. The Board of Appeals may grant or deny the application at the end of the work session, stating its findings of fact and conclusions of law, or it may take the case under advisement for further deliberation and later decision.

C. Additional Hearing Procedures.

(1) Time Limits²⁰. Presentations and testimony must be summarized to comply with prescribed time limits and provide for an efficient hearing. Supporting written evidence may be submitted in advance of a hearing as set forth in Section XV.

(a) The following time limits for hearings shall be observed:

(i) Applicant's Presentation and witness testimony, excluding cross-examination — 90 minutes.

(ii) Opposition's Presentation and witness testimony, excluding cross-examination — 90 minutes.

(iii) Witnesses — 20 minutes maximum per witness.

(iv) Public comments — three (3) minutes per person.

(v) Summations — ten (10) minutes.

(b) The Chairperson may allow additional time if, in the Chairperson's sole opinion, it is required.

(c) If a party anticipates that his or her case, or the testimony of any witness, will exceed these time limits, he or she shall notify the Clerk. Since hearings are scheduled in advance and generally conform to the prescribed time limits, extensions of times for a case may cause it to be rescheduled to a date that can accommodate the additional time requested.

²⁰ Zoning Regulations § 297-412(c)

- (d) Any person wishing to comment that is unable to appear before the Board may submit written comments in advance of the hearing. These written comments must be submitted no later than three (3) business days in advance of the hearing date.
- (e) If the number of public commenters exceeds the ability of the Board to hear them all within the allotted time the Chairperson may;
 - (i) Limit public comments to residents of Charles County; and/or
 - (ii) Keep the record of the case open for another seven (7) days or longer so the persons who could not be heard in person can submit their comments to the Board in writing. The Board shall not make a final decision in the case at hand until at least seven (7) days after the period for public comments has closed.
- (2) Legal Memoranda. The Chairperson may authorize the receipt of legal memoranda providing interpretations of law by counsel to the Applicant or Opposition.
- (3) Burden of Proof. The burden of proof is one of a preponderance of the evidence and it is on the Applicant to show, by substantial evidence and competent testimony, that the request meets all prescribed standards as contained within the Zoning Regulations.

XII. Administrative Appeals Procedures

- A. Parties to an Appeal. When an appeal is taken to the Board, the Zoning Officer shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The owner of the property that is the subject of the appeal is a party to the appeal, whether as an appellant or in opposition to an appeal. If the property owner is in opposition to the appeal, the owner may also present evidence and argument to justify the order appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall have the burden of persuasion on all questions of fact which are determined by the Board.

B. De Novo Appeals.

- (1) All appeals conducted by the Board of Appeals are De Novo Appeals.
- (2) Certain rules and procedures listed under *General Hearing Procedures* apply to de novo hearings where the Board acts pursuant to its original jurisdiction as set forth in Section XVI, A and B. Those are Rule XI B(3)-(12), and C(2).
- (3) Incorporation of Previous Record.
 - (a) Whenever an appeal is filed, the Zoning Officer shall transmit to the Board the entire record relating to the action appealed from. If the action appealed is one in which the decision was made in the course of a hearing which was videotaped, a transcription of the hearing is not required. The Zoning Officer shall indicate in the record a reference to the videotape. If a transcript of the hearing is requested, the cost of the transcript will be paid by the party requesting it.
 - (b) Parties shall minimize repetition of evidence contained within the previous record.
- (4) Burden of Proof.
 - (a) In administrative appeals from notices of violation of county laws and regulations, including the issuance of cease and desist orders, the burden of proof is upon the government official declaring the violation. The case must be proven through a preponderance of evidence.
 - (b) In all other de novo appeals, the burden of proof shall rest upon the Appellant to prove the action taken by the administrative official was clearly erroneous, illegal, unconstitutional, or arbitrary and capricious.

XIII. Continuances & Rescheduling

- A. Those cases which have not concluded may be continued to a date and time specified by the Board. If the Board announces the date and time of the next meeting of this case, it will not be necessary to re-advertise or re-post the notice(s).

- B. In situations where a continuance has been granted for an indefinite period of time, or the case is rescheduled prior to coming before the Board, it shall be necessary to re-advertise and re-post the property and notify adjoining property owners in accordance with the Zoning Regulations. If the notice for the initial hearing date has already been published and a continuance has been requested that would require re-publication of notice, the cost of any additional publication notices will be borne by the Party requesting the continuance.
- C. Through the Clerk, the Applicant has seven (7) days from the date on the tentative schedule letter to accept or decline and request a new tentative date. If the Applicant does not respond in the allotted time, the Clerk will assume the Applicant has accepted.
- D. Once the tentatively scheduled date has been accepted, the Chairman may grant the request for rescheduling depending on the Board's caseload and the effect on the scheduling of other cases. After the formal public notice process has begun, the Applicant must formally request a continuance and pay the filing fee adopted by the Charles County Commissioners in the schedule of fees.

XIV. Acts of Preemption

- A. If federal or state legal preemption may be relevant to a pending hearing, the Board must determine if any aspects of the case are actually preempted, and therefore not to be heard. This determination should be made before the Applicant's presentation begins.
 - (1) The County Attorney shall prepare a legal memorandum with a recommendation to the Board on behalf of Charles County Government, prior to the start of a hearing. This legal memorandum will be available to the public, and a part of the docket record.
 - (2) Any other Party to a hearing may also submit a legal memorandum on federal or state legal preemption for consideration by the Board, prior to the start of a hearing.

- B. After reviewing preemption memoranda from the County Attorney and any other Parties, the Board shall take a vote to decide which aspects of a case will be excluded from consideration based on preemption.
- (1) The Board shall not hear evidence related to preempted aspects of a case. The Board will hear evidence and testimony to make decisions on the aspects of the case not preempted by federal or state law.
 - (2) If all questions of a case are preempted by state or federal law, the Board shall not act to approve or deny an application.

XV. Evidence

A. Overview.

- (1) Any evidence admissible under the rules of evidence of judicial proceedings in the State of Maryland shall be admissible in hearings before the Board.
- (2) The Board will not be bound by the technical rules of evidence; however, it will endeavor to apply such rules to ensure probative evidence is appropriately adduced. The Board may exclude immaterial or unduly repetitious evidence and may limit the number of witnesses when testimony is cumulative in nature.
- (3) The Board will not recognize or qualify "expert witnesses;" however, it will hear witnesses and give weight to their testimony as each Board member deems appropriate to the knowledge of the witness. Nothing contained in this Rule is intended to prohibit any person from expressing an opinion on any matter about which he or she may testify.
- (4) All public records, previous Board cases, public and local laws, and regulations of Charles County that pertain to a case may be received by reference by the Board for its consideration.
- (5) Board members may view the subject property individually prior to the hearing. This does not give Board members the right to enter the property.

Prior to the beginning of the hearing the Clerk to the Board shall poll the members as to whether they viewed the subject property.

B. Submission of Evidence.

(1) Electronic Evidence.

- (a) Written evidence should be provided in electronic format suitable to be posted online for access by Board members and the public. If evidence is not submitted electronically, the Clerk shall scan the evidence into electronic form and the party submitting the evidence may be charged a fee for the scanning services.
- (b) Audio and Video evidence must be in electronic format compatible with County information technology software and equipment. Actual formats required for these files shall be determined by the Clerk. There may be file size limits. If a file exceeds those limits, it may need to be segmented into multiple files that can be run independent of each other.
- (c) All electronic evidence shall be named, marked, and labeled according to the following procedures:
 - (i) The file name shall consist of the docket number, a dash, a sequential item number, a dash, and then a brief description of the evidence. Example: 1896-4-Site Plan;
 - (ii) Evidence from the Applicant shall be numbered consecutively and chronologically as it is admitted into evidence, starting with the number “1;”
 - (iii) Evidence from any opposition party shall be lettered consecutively and chronologically as it is admitted into evidence, starting with the letter “A.” If more than 26 pieces of evidence are submitted, double, and then triple letters will be used (e.g. AA, AB,...AZ, AAA...); and

(iv) On the first page or a cover page of each piece of evidence, the docket number and evidence number or letter shall be annotated.

(2) Physical Evidence.

(a) Physical copies of all large format documents (those over a size of 8-1/2" x 11") must be accompanied by an electronic version. Physical copies may be required of other documents the Clerk determines is necessary to facilitate use of the evidence by the Board, such as those in color.

(b) Eight copies of any physical evidence shall be provided to the Clerk so each Board member, the Clerk, and the Board's legal counsel will have their own copies. The Clerk may require additional copies if there are known opposition parties for the case.

(c) Physical evidence shall be marked and serialized in the same manner as electronic evidence.

(3) Each piece of electronic evidence shall be placed by the Clerk onto an electronic storage area accessible by the public (e.g. Board Docs).

C. Submission and Posting Deadlines.

(1) Initial docket packages containing the application, supporting documentation, and staff report shall be posted no later than fourteen (14) days in advance of the meeting.

(2) Supplemental evidence shall be provided to the Clerk as soon as possible. The Clerk will expeditiously release the evidence to the public access web site (e.g. Board Docs).

(3) Any evidence submitted in advance of the hearing must still be formally presented as evidence during the hearing by the appropriate party and accepted as admissible by the Chairperson.

D. Evidence Admitted during the Hearing.

- (1) Introduction of new written evidence at the hearing may result in a continuance or delayed decision to allow the Board and the public an opportunity to review such evidence.
- (2) The Chairperson shall determine admissibility of any evidence, and the Clerk shall enter it into the record of evidence and to take custody of that evidence.
- (3) Evidence collected during the hearing will be placed onto the same location of the electronic storage area (e.g. Board Docs) as the evidence that was presented prior to the hearing. This will ensure a full record of evidence is maintained and accessible by the Board and the public.

XVI. Decisions and Orders

A. Decisions.

- (1) For Hearings on Variances and Special Exceptions, the Board may approve, deny, or approve with conditions.
- (2) For Administrative Appeals, the Board, having all of the powers of the jurisdiction appealed, may approve, overturn and deny, approve with conditions, or remand back to the original jurisdiction.
- (3) In all cases, it is imperative that the Board strive to articulate, during any decision process, the reasons for the decision so they may be properly recorded for the record.

B. Orders²¹.

- (1) The final Order of the Board granting or denying an application shall be in writing, listing the Board members and their votes, signed by all members of the Board who participated in the case and attested by the Clerk. Board members may sign using electronic signatures. The Decision will be accompanied by written findings of fact and conclusions of law.

²¹ Zoning Regulations § 297-413

- (2) The Decision and Order shall be made a part of the record of proceedings, shall be filed with the Office of Planning and Growth Management, and maintained as part of the official records of the County.
 - (3) Each case shall be decided, and the final Decision and Order shall be issued no later than sixty (60) days from the close of the last public hearing, unless such time is extended by an official resolution adopted by the Board.
 - (4) Upon receipt of the Board's final decision and order in any case, the Clerk shall cause copies thereof to be provided the Applicant, all parties of interest who appeared or testified during the hearing who provide their names and addresses, and all other persons who make a request for a copy thereof. If the Order was from an Appeal, the Clerk shall also provide the official having original jurisdiction in the matter a copy of the Order.
- C. For any time-limits on responses to Decisions and Orders, the time will start as of the date the Decision and Order is mailed, not the date it was signed, and the date of mailing shall be stated at the end of the Decision and Order.

XVII. Quorums & Voting

- A. A minimum of three (3) members of the Board must be present to form a quorum. A majority of those present may take a decision on any motion, or application, or appeal, unless otherwise stated in these rules of procedure.
- B. If less than five (5) members are present for a motion and that motion results in a tie vote, the absent members shall review the record of the case, including all evidence and testimony of the case, within fifteen (15) days. During the next open meeting, those previously absent members shall state orally (if recorded) or in writing that they reviewed the record and evidence. They shall then vote on the motion and their votes shall be added to those previously recorded. Changing votes by those who previously voted is not allowed, except through the procedures set forth under *“Revisory Power of the Board.”*
- C. In the event of a tie vote with the full Board present, that result shall be construed as a vote to deny the motion or application or appeal at hand.

XVIII. Revisory Power of the Board

A. Procedure²².

- (1) Within 15 days after the Board mails its decision, the Board or any party in interest may file a motion for reconsideration of the decision or a provision or condition in a decision with the Zoning Officer.
 - (a) The date the decision is mailed shall be indicated on the decision by the Clerk to the Board.
 - (b) In the event of extraordinary circumstances which prevent the party from filing the motion for reconsideration within 15 days, the Board may, on the affirmative vote of 3 members, accept the motion after the 15-day period, but in no event later than 30 days from the date the written decision and order is mailed.
- (2) The party filing such a motion shall transmit copies to all parties to the proceeding and shall file an affidavit of mailing with the Zoning Officer.
- (3) The matter will be placed on the Board's agenda within 30 days after the Zoning Officer has transmitted the motion to the Board.
- (4) Any party may, within 15 days of the date of filing the motion for reconsideration, file a written response to such request.
- (5) The Board may suspend its decision while it is considering whether or not to act on the motion. The period of time the suspension of the decision is in effect shall toll the time for the filing of an appeal of the Board's decision, and the amount of time the decision is suspended shall be added to the time the party has to appeal so that the party shall have a total of 30 days to file an appeal.

²² Zoning Regulations § 297-414

- (6) Absent a Board vote modifying, suspending or withdrawing its decision and order, the time for filing an appeal to the Circuit Court is not affected by a motion for reconsideration, modification or rehearing.
 - (7) All action related to the filing of a motion for reconsideration, whether it be ruling on a request to suspend the decision or on the merits of the motion, require an affirmative vote of 3 members.
- B. Grounds for Reconsideration, Modification, or Rehearing.
- (1) Reconsideration or modification shall be granted only upon a showing of mistake of fact or law, or to correct clerical error.
 - (2) A rehearing will not be granted unless evidence of changed circumstances or new evidence is submitted which could not reasonably have been presented at the original hearing, or unless some mistake or misrepresentation was made at the original hearing that requires rehearing and re-argument to be corrected.
 - (3) At any time, the Board may revise its decision or, without suspending its decision, to modify conditions established in the cases of fraud, mistake, or irregularity.

XIX. Appeals to Circuit Court

- A. All final, written decisions of the Board, except as stated in §418 297-417 of the Charles County Zoning Regulations, shall be subject to review by the Circuit Court for Charles County, upon an appeal filed pursuant to the Maryland Rules of Procedure by any party aggrieved by a decision, within the time prescribed for appeals from administrative agencies by such rules of procedure [See §419 for a Special Exception for surface mining, asphalt plants or sand and gravel washing, crushing or screening].

XX. Rules not Jurisdictional

- A. These Rules of Procedure do not constitute jurisdictional requirements. Failure of the Board, its staff, or any party to comply with any provisions of these Rules of Procedure shall not invalidate any otherwise valid decision or action of the Board.

XXI. Severability

- A. If any provision of these Rules are held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall become inoperative. The remainder of the Rules shall remain in effect.