

Title 1. In General

Rule 1-101. Scope.

The rules of practice and procedure set forth in this appendix are generally applicable to proceedings before the County Board of Appeals.

(Bill No. 53-86, § 1)

Rule 1-102. Officers.

(a) The County Board of Appeals shall elect one of its members as chairman and one as vice-chairman at the pleasure of the Board. The chairman shall preside at all meetings of the Board, and in the chairman's absence the vice-chairman shall preside. In the absence of the chairman and the vice-chairman, a member designated by the remaining members of the Board shall act as chairman and shall preside with all the powers of the chairman.

(b) All staff members shall report directly to the chairman of the Board. The chairman shall assign to various staff members their functions and duties.

(Bill No. 53-86, § 1)

Rule 1-103. Meetings.

(a) Meetings of the County Board of Appeals shall be held at the call of the chairman and at such other times as the Board may determine, but in no event shall it be less than once a month.

(b) Four members of the Board shall constitute a quorum for the conduct of business; except that three members shall constitute a quorum for hearings on special exceptions, variances, and administrative appeals. Site visits pursuant to Rule 4-101(g) are not governed by this rule.

(c) The Board shall keep minutes of its proceedings, showing the vote, failure to vote, or absence of each member on each question, all of which shall be filed promptly in the office of the Board as a public record after approval by all Board members. Only those members who have actually heard all the evidence and testimony in an appeal shall participate in the decision unless all parties to the appeal shall agree otherwise.

(Bill No. 53-86, § 1; Bill No. 22-90, § 1; Bill No. 99-93, § 1; Bill No. 32-97, § 1)

Rule 1-104. Administrative matters.

(a) The Clerk shall handle all correspondence of the Board, send out all notices required by these rules, keep the dockets and minutes of the Board's

proceedings, compile all required records, maintain the necessary files and indexes, and perform such other duties as directed.

(b) The Clerk shall keep a docket and minute book which shall be kept posted to date. The Clerk shall docket the case in the name of the original applicant, note the name of the appellant, and include a short description of the subject matter of the appeal and the number assigned to the appeal. In cases involving real property, a brief description of the property shall also be included.

(Bill No. 53-86, § 1)

Rule 1-105. Computation of time

(a) In computing any period of time prescribed by these rules, by order of the County Board of Appeals, or otherwise, the day of the act or event after which the designated period of time begins to run is not included. If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and legal holidays are counted; but if the period of time allowed is seven days or less, intermediate Saturdays, Sundays, and legal holidays are not counted. The last day of the period so computed is included unless:

(1) it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday; or

(2) the act to be done requires performance in the office of the County Board of Appeals and the office is not open on the last day of the period, or is closed for a part of the day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, legal holiday, or a day on which the office is not open during its regular hours.

(b) In determining the latest day for performance of an act which is required by these rules, by order of the County Board of Appeals, or otherwise, to be performed a prescribed number of days before a certain day, act, or event, all days prior thereto, including intervening Saturdays, Sundays, and legal holidays, are counted in the number of days so prescribed. The latest day is included in the determination unless it is a Saturday, Sunday, or legal holiday, in which event the latest day is the next day which is not a Saturday, Sunday, or legal holiday.

(Bill No. 53-86, § 1; Bill No. 99-93, § 1)

Title 2. Commencement of Action

Rule 2-101. Appeals.

(a) All appeals from orders or decisions from which an appeal is authorized by law shall be taken within 30 days of the date of such order or decision, except

where a different period is prescribed by law or rule, by the filing of a notice of appeal with the County Board of Appeals.

(b) In appeals from the decisions of the Administrative Hearing Officer, the notice of appeal shall include the following information:

- (1) the title of the proceedings;
- (2) the name of the applicant;
- (3) the application or case number;
- (4) the date of the public hearing before the Administrative Hearing officer;
- (5) the date of the decision; and
- (6) a general statement of the basis for the appeal.

(c) In appeals from administrative decisions of County offices involving real property, the notice of appeal shall include the following information:

- (1) location of the subject property;
- (2) number of the councilmanic district in which the subject property is located;
- (3) names and mailing addresses of owners of real property within 175 feet of the subject property;
- (4) the name of the applicant;
- (5) a copy of the decision from which the appeal is taken; and
- (6) a general statement of the basis for the appeal.

(d) In all other appeals, the notice shall include the following information:

- (1) the name of the applicant;
- (2) a copy of the order or decision from which the appeal is taken;
- (3) the name of the officer making that order or decision and the date thereof; and
- (4) a general statement of the basis for the appeal.

(e) The information shall be provided in writing to the Board's office within 30 days of the date an appeal is filed. In cases where the information is not so submitted, the Board may dismiss the appeal.

(Bill No. 53-86, § 1; Bill No. 12-88, § 1; Bill No. 22-90, § 1; Bill No. 99-93, § 1; Bill No. 32-97, § 1; Bill No. 14-01, § 1)

Rule 2-102. Docket and calendar.

(a) Each appeal, when filed in proper form, shall be numbered serially, docketed and placed upon the calendar of the Board by the Clerk.

(b) Appeals shall be heard in the order in which they are filed with the Board, except that cases to be heard on any given day maybe arranged in any convenient sequence for that day by the Clerk. The Board may advance a given case on the docket and hear the case out of order:

(1) On its own motion;

(2) Upon showing of good cause and after notice to all parties or attorneys of record; or

(3) Pursuant to County law.

(Bill No. 53-86, § 1; Bill No. 12-88, § 1)

Rule 2-103. Fees.

(a) A notice of appeal may be accepted by the County Board of Appeals only when accompanied by the relevant fee listed below:

(1) Appeals from decisions of the Administrative Hearing Officer relating to reclassifications and special exceptions and appeals from decisions of the Department of Inspections and Permits relating to grading permits . . \$400

(2) All other appeals . . . \$250

(b) Notwithstanding the provisions of subsection (a) of this section, the total of fees for consolidated, multiple appeals from decisions of the Administrative Hearing Officer shall not exceed \$1,000. No fees paid as required by this section shall be returned to the appealing party, except by order of the Board upon good cause shown.

(Bill No. 53-86, § 1; Bill No. 12-88, § 1; Bill No. 22-90, § 1; Bill No. 43-92, § 1; Bill No. 99-93, § 1; Bill No. 14-01, § 1)

Rule 2-104. Notice of hearing.

(a) Notice of the hearing of an appeal, excluding an appeal relating to a grading permit, shall be given by mailing a notice, at least 30 days before the date of the hearing. Notice of the hearing of an appeal relating to a grading permit shall be given in as timely a manner as practicable, either orally or in writing. Notice shall be given to:

- (1) The appellant or the appellant's attorney if the appellant is represented by an attorney, at the address stated in the notice of appeal;
- (2) The Administrative Hearing Officer or other official whose order or decision is being appealed
- (3) The County Attorney;
- (4) The original applicant or the original applicant's attorney; and
- (5) Other interested parties as the Board may deem appropriate.

(b) Notice of the hearing of any appeal shall be published once a week for not less than two consecutive weeks, in two newspapers of general circulation published in the County. Such notice shall specify the time, date, place, and subject of the hearing. The hearing shall be not less than six days following the final newspaper publication. The Clerk shall post the notice on the County bulletin board when the hearing date is set.

(Bill No. 53-86, § 1; Bill No. 12-88, § 1; Bill No. 22-90, § 1; Bill No. 99-93, § 1)

Rule 2-105. Appearance and practice.

(a) An individual may appear in the individual's own behalf; a member of a partnership may represent the partnership; a bona fide officer or representative of a corporation, trust or association may represent same; and an officer or employee of a political subdivision or body or department may represent same in any proceeding.

(b) A person, firm, or corporation may be represented in any proceeding by an attorney admitted to practice before the Court of Appeals of Maryland.

(c) A person, firm, or corporation shall not be represented in any hearing except as provided above.

(d) An attorney who wishes to appear in any proceeding in a representative capacity which involves a hearing or an opportunity for a hearing shall file with the County Board of Appeals a written notice of appearance which includes the

attorney's name, business address, telephone number, and the names and addresses of the persons represented by the attorney. No formal notice of appearance is necessary if the notice of appeal contains the required information.

(Bill No. 53-86, § 1)

Title 3: Prehearing Procedure

Rule 3-101. Other pleadings.

No other pleadings shall be required from the appellant or other parties; but if filed, copies thereof shall be served on the parties or their attorney of record before the Board, and a certificate of service shall be affixed thereto.

(Bill No. 53-86, § 1)

Rule 3-102. Withdrawal.

(a) An appellant may withdraw an appeal at any time within 30 days of the date of the order or decision being appealed. A request for withdrawal shall be in writing and the Board shall serve a copy on:

(1) The Administrative Hearing Officer or other official whose decision is being appealed;

(2) The County Attorney; and

(3) All parties of record to the proceedings and their attorneys.

(b) (1) Excluding a withdrawal of an appeal relating to a grading permit filed under Article 21, § 2-106 of the Anne Arundel County Code, filing a withdrawal pursuant to subsection (a) of this section shall extend by 10 days the time within which an appeal may be taken by any other party. The 10 days begins the day after the day on which the Board mails the notice of withdrawal.

(2) For an appeal relating to a grading permit, the provisions of Article 21, § 2-106(e) of the Anne Arundel County Code shall control.

(c) An appellant who seeks to withdraw an appeal at any time after 30 days following the date of the order or decision being appealed may do so if no objection to the withdrawal is made by any other party or any owner of real property within 175 feet of the subject property, or if granted permission to withdraw by the Board upon good cause shown.

(Bill No. 53-86, § 1; Bill No. 12-88, § 1; Bill No. 22-90, § 1; Bill No. 99-93, § 1)

Rule 3-103. Request for postponement.

(a) Any party to an appeal may, in writing, request a postponement of a scheduled hearing. A request for postponement may not be granted except for good cause shown.

(b) A request for postponement shall be in writing, stating in detail the reasons the postponement is desired. The request shall include a statement by the party making the request, agreeing to pay any additional expenses incurred if the postponement is granted, including readvertising and other reasonable administrative costs as assessed by the Board. Copies of all requests shall be mailed to all parties and attorneys of record and to the County Attorney. The request for postponement shall be decided by a majority vote of a quorum of the Board.

(c) The Board shall hear an appeal within six months from the date of the filing thereof, unless the Board waives this requirement upon good cause shown.

(Bill No. 53-86, § 1; Bill No. 12-88, § 1; Bill No. 99-93, § 1; Bill No. 14-01, § 1)

Rule 3-104. Prehearing procedure.

(a) There shall be no prehearing procedure before the County Board of Appeals except as follows:

(1) Motion to determine standing.

(2) Motion to dismiss for lack of jurisdiction;

(3) Request for postponement pursuant to Rule 3-103 or for advancement pursuant to Rule 2-102;

(4) Request for waiver of six-month hearing requirement pursuant to Rule 3-103; or

(5) Request for withdrawal of an appeal pursuant to Rule 3-102.

(b) In accordance with Article 3, § 1-106 of the Anne Arundel County Code, a party, attorney, spokesperson, or representative of any party or any other person may not communicate ex parte or confer privately with any member of the County Board of Appeals concerning any appeal. Any information sought by an interested party shall be directed to the Clerk of the Board or to the Attorney to the Board. A member of the Board may not communicate with any party, attorney, spokesperson or representative of any party, or other person outside of

the hearing room concerning any appeal until after the Board is divested of jurisdiction in the case.

(c) Any person who violates a provision of subsection (b) of this rule shall be subject to the penalties set forth in Article 3, § 1-106 of the Anne Arundel County Code.

(Bill No. 53-86, § 1; Bill No. 99-93, § 1; Bill No. 14-01, § 1)

Rule 3-105. Depositions and discovery.

There shall be no depositions or discovery.

(Bill No. 53-86, § 1)

Title 4. Hearings

Rule 4-101. Conduct of hearings.

(a) All hearings before the County Board of Appeals shall be public. No hearing shall be private even though all parties agree. All witnesses shall testify under oath, administered by the chairman, the Clerk or the Assistant Clerk. All persons attending the meeting who decline to testify may sign the witness list and thereby be provided with notice of all future proceedings involving the appeal.

(b) The Board shall furnish an official stenographer for taking testimony of the hearing in all appeals. Anyone desiring a transcript of the testimony may obtain a copy from the official stenographer and shall bear the full cost. The Board is not required to furnish a stenographer during an on-site inspection conducted pursuant to subsection (g) of this rule.

(c) A continuance, if requested by any party, may be granted by majority vote of the Board for good cause shown. If a case is continued for more than 30 days, the case shall be readvertised and reposted, if posting was required for the initial hearing date, at the sole expense of the party requesting the continuance.

(d) Evidence at the public hearing shall be presented first by the applicants, then by persons in opposition, and lastly by the County agency involved, unless otherwise designated by the Board.

(e) The chairman shall regulate the course of the hearing and shall rule upon procedural matters and objections made during the course of the hearing. Counsel to the Board shall be present at all hearings to advise the Board on legal and procedural issues.

(f) A hearing may be recessed from time to time for good cause shown and if the time and place of the recessed hearing is announced publicly. No further notice of the recessed hearing shall be required.

(g) Upon request of any party or upon its own motion, Board members may visit the site which is the subject of the appeal. Parties and their representatives may be present to observe, but no testimony may be taken. The parties or their representatives are prohibited from engaging in any discussion with Board members at the site visit. Board members are prohibited from engaging in any discussion with the parties or their representatives at the site visit. A member who has not participated in the site visit prior to the Board's vote on the appeal may not participate in the decision.

(h) If a case is appealed to the Board from a decision of the Administrative Hearing Officer, and the Board determines that the Administrative Hearing Officer's decision was based on the failure of the applicant to appear either in person or by representation, the Board first shall determine if the decision of the Administrative Hearing Officer to dismiss the application was proper. If the Board determines that the decision of the Administrative Hearing Officer to dismiss the application was not proper, the Board shall proceed to hear the appeal on its merits.

(Bill No. 53-86, § 1; Bill No. 22-90, § 1; Bill No. 99-93, § 1; Bill No. 32-97, § 1; Bill No. 14-01, § 1)

Rule 4-102. Disqualification and discipline of Board members.

(a) A member of the Board may not participate in any matter or proceeding before the Board, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to that matter, if, to the member's knowledge, the member or the member's spouse, or any relative of the member or the member's spouse within the third degree of consanguinity, or the spouse of any such relative, has an interest therein as that term is defined in Article 9, § 1-101 of the Anne Arundel County Code or if any of the following is a party thereto:

(1) Any business entity in which the member has a direct financial interest as that term is defined in Article 9, § 1-101 of the Anne Arundel County Code of which the member may reasonably be expected to know;

(2) Any business entity of which the member is an officer, director, trustee, partner, or employee, or in which the member knows any of the above-listed relatives has such interest;

(3) Any business entity with which the member or, to the member's knowledge, any of the above-listed relatives is negotiating or has any arrangement concerning prospective employment;

(4) Any business entity which is a party to an existing contract with the member or which the member knows is a party to a contract with any of the above-named relatives, if the contract could reasonably be expected to result in a conflict between the private interests of the member and the member's official County duties;

(5) Any entity, either engaged in a transaction with the County or doing business with the County, in which a direct financial interest is owned by another entity in which the member has a direct financial interest if the member may reasonably be expected to know of both financial interests;

(6) Any business entity which the member knows is the member's creditor or obligee, or that any of the above-named relatives, with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the member or any of the above-named relatives.

(b) A member of the Board shall reveal on the record any ex parte communications or special knowledge concerning a matter before the Board.

(c) A member of the Board may choose to determine his or her disqualification for bias, conflict of interest, or for other good cause. Upon doing so, that member shall be prohibited from participating in any further proceedings relating to the case. If a Board member's participation in the case is challenged by a party to the appeal for alleged bias, conflict of interest, or other good cause, and if the member declines to disqualify himself or herself, the remaining Board members participating in the appeal shall decide by majority vote whether or not the member shall be disqualified.

(d) Whenever a complaint against a member of the Board is filed pursuant to Article 3, § 1-101.1 of the Anne Arundel County Code, the following procedures shall apply:

(1) The Clerk shall notify all members of the Board that an affidavit has been filed charging a member of the Board with a violation of the Code or of these rules. No information about the allegations, the contents of the affidavit, or the fact that it has been filed may be released to any person other than the individual filing the affidavit, the Board members, and the attorney to the Board. After a hearing has been scheduled before the County Council, the Clerk may release the contents of the affidavit and the fact that it has been filed. No other information may be released.

(2) During the confidential meeting of the Board to discuss the allegation, only the complainant, Board members, Clerk to the Board, and attorney to the Board may be present. The Board shall hear from the complainant and from the member or members against whom the allegation was made. The meeting may be conducted in an informal manner, in the discretion of the Board member chairing the meeting.

(3) If at least four Board members determine that there is a reasonable belief that there has been a violation as alleged, the Board shall transmit the affidavit, any pertinent documents relating to the allegation, and the minutes of the confidential meeting to the County Council for a public hearing on the merits of the complaint. If the Board does not determine that there is a reasonable belief that there has been a violation, the matter shall be considered closed and no information regarding the allegation may be released to the public.

(Bill No. 53-86, § 1; Bill No. 99-93, § 1)

Rule 4-103. Subpoenas.

(a) The County Board of Appeals shall have the power to issue subpoenas to compel the appearance of witnesses, and to require the production of documentary or other tangible evidence.

(b) The Board may cause subpoenas and subpoenas duces tecum to be issued upon its own motion, or upon the application of any party to any hearing; but any such application shall be in writing and shall set forth the persons, books, papers or other documents to be produced and a general statement as to the purpose of the subpoena.

(c) Subpoena procedures shall be in accordance with Article 2, § 1-101 of the Anne Arundel County Code. If a party requesting a subpoena elects to have the subpoena served by the Sheriff, the party requesting the subpoena shall be responsible for paying any fee for service imposed by the Sheriff.

(Bill No. 53-86, § 1; Bill No. 99-93, § 1)

Rule 4-104. Evidence.

(a) The chairman may admit evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The chairman shall give effect to the rules of privilege recognized by law. The chairman may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(b) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(c) The parties shall have the opportunity to cross-examine witnesses. The chairman shall permit a representative or representatives of persons in opposition the opportunity to conduct cross-examination.

(d) The chairman may question witnesses testifying as representatives of associations as to their authorization to testify on behalf of the association, and may permit cross-examination as to the authorization by those representing parties to the appeal.

(Bill No. 53-86, § 1; Bill No. 22-90, § 1; Bill No. 99-93, § 1

Rule 4-105. Findings and conclusions.

(a) Within 60 days after the termination of the hearing, the County Board of Appeals shall prepare and file in the proceedings a written succinct memorandum of opinion, including its findings and conclusions. If the Board determines that more than 60 days are required, the Clerk shall so notify the parties. For purposes of this subsection, a hearing shall be considered terminated upon the closing of testimony, the conducting of an on-site inspection, or the submission of any final items of evidence or written arguments pursuant to an order of the Board, whichever shall occur last. The Board's decision shall rest entirely upon the pleadings and the evidence.

(b) At any time within 30 days after the filing of the memorandum and in the absence of an appeal to the Circuit Court for Anne Arundel County, the Board may revise and submit a written memorandum to correct clerical or other errors of form, providing such corrections make no change of substance in the memorandum. The revised memorandum shall be furnished to all parties and attorneys of record.

(c) The Board shall furnish copies of all orders and opinions to all parties to the proceedings or their attorneys of record. Any opinions rendered by the Board shall include a summary of pleadings, a summary of the evidence, findings of fact, and the basis for the conclusion reached by the Board. Any orders rendered by the Board shall be approved as to form by the attorney to the Board.

(Bill No. 53-86, § 1; Bill No. 22-90, § 1; Bill No. 99-93, § 1)

Title 5: Appeals

Rule 5-101. Appeals from decisions of the Board.

(a) All appeals from decisions of the County Board of Appeals shall be in accordance with the provisions of § 604 of the Charter of Anne Arundel County and the Maryland Rules of Procedure.

(b) Upon receipt of the copy of the petition for appeal filed with the Court and unless otherwise ordered by the Court, the Clerk to the Board shall give written notice promptly by ordinary mail to all parties to the Board's proceedings that a petition for judicial review has been filed, the date of the filing, the name of the Court, and the civil action number and that a party wishing to oppose the petition must file a response within 30 days after the date the notice was mailed unless the Court shortens or extends the time. The Clerk shall file with the Court a certificate of compliance with this requirement, pursuant to Maryland Rule 7-202(e).

(c) Within 15 days after the filing of the appeal, unless otherwise directed by the Court or the time is extended or shortened by the Court, the Clerk shall file with the Circuit Court original or certified copies of all papers and evidence presented to the Board during the proceedings, including an original or certified copy of the Board's memorandum of opinion and order.

(d) Within 30 days after receipt of a copy of the petition, unless otherwise directed by the Court or the time is extended or shortened by the Court, the Clerk to the Board shall transmit to the Court original or certified copies of all papers and exhibits not submitted in accordance with subsection (c) of this rule, including the transcript of the testimony, except as to any documents which the parties to the proceedings before the Board shall stipulate may be omitted. Such a stipulation shall be transmitted to the Court along with the record.

(Bill No. 53-86, § 1; Bill No. 14-01, § 1)