

ARTICLE 25 - BOARD OF APPEALS

Section 25.1 Created; Name; Number, Term of Office, Removal, Etc. of Members

The Board of Appeals of Washington County consisting of five members is hereby created. Their terms of office, succession, removal, filling of vacancies, alternate membership, and their powers and duties shall be as provided in Article 66B, Annotated Code of Maryland.¹

Section 25.2 General Powers²

The Board shall have the following powers:

- (a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance, the Washington County Forest Conservation Ordinance, or of any ordinance adopted thereto.
- (b) To hear and decide special exceptions to the Ordinance upon which the Board is required to pass.
- (c) To authorize a variance from height, lot area, yard regulations, parking space requirements, sign regulations, distance requirements specified in Section 4.9, buffer requirements and other distance or dimensional requirements of the Ordinance.
- (d) In exercising the above-mentioned powers, the Board may, in conformity with the provisions of law and this Ordinance and amendments thereto, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as ought to be made.
- (e) The Board is also empowered to adopt and promulgate such rules and regulations as it shall deem necessary in the conduct of its hearings and the issuance of its decisions or testimony pertaining to its hearings.

Section 25.3 Organization; Meetings, Authority to Administer Oaths and Compel Attendance of Witnesses; Technical Assistance; Minutes of Proceedings; Records

The Board shall be organized and its rules shall be amended, if necessary, in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at such time as the Board may determine.

The chair, or in his absence, the acting chair, may administer oaths and compel the attendance of witnesses. For assistance in reaching decisions relative to appeals, conditional uses, or variances, the Board may request testimony at its hearings for purposes of securing technical aid or factual evidence from the

¹ See Annotated Code of Maryland, 1970, Article 66B, 4.07

² Revision 1, Section 25.2(c) amended 1/10/89 (RZ-413)
Revision 6, Section 25.2(a) amended 2/9/93 (RZ-92-16)

Commission or any County agency. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, and shall keep records of all its official actions, all of which shall be filed in the office of the Board and shall be a public record.

Section 25.4 Appeals to the Board

An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, commission or bureau of the County affected by any decision of the Planning and Zoning Commission or the Historic District Commission. Such appeal shall be taken within thirty (30) days after the decision by filing with the appropriate Commission and with the Board, a Notice of Appeal, specifying the grounds thereof. The appropriate Commission shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

Section 25.5 Hearings by the Board

Section 25.51 Hearings

Action required after filing of application. Upon the filing of an application before the Board, the following action shall be taken preparatory to holding a hearing thereon:

- (a) The Board shall hold a hearing no later than thirty (30) days from the date the appeal is taken. Applicants and other parties may petition the Board for continuance or change of said dates for good cause shown.
- (b) Notice of the hearing shall be advertised in two consecutive issues of a newspaper having general circulation in the County. The first insertion shall appear in such newspaper at least fifteen (15) days prior to such hearing.
- (c) Property upon which the application or appeal is concerned shall be posted conspicuously by a zoning notice no less in size than twenty-two (22) inches by twenty-eight (28) inches at least fourteen (14) days before the date of the hearing.
- (d) The Board, in its discretion, upon request, or upon its own motion, may visit the specific property in question prior to or after the hearing in order to make proper determination of all applicable facts.

Section 25.52 Hearings - Holding of Hearing; Appearance at Hearing

The Board, following such action above, shall hold such hearing. At the hearing, any party may appear and be heard in person or by agent or attorney.

Section 25.53 Hearings - Postponement

- (a) Requests for postponement of a scheduled hearing shall be filed in writing with the Board not less than ten (10) days prior to the date of hearing, and shall be accompanied by a sum of money sufficient to pay the cost of advertising the postponement and the rescheduled hearing. The granting of such requests shall be at the discretion of the Board.

- (b) Requests for postponement filed later than ten (10) days prior to the date of a scheduled hearing, shall, in addition to the other requirements set forth in subsection (a) above, be supported by an affidavit of the party making the request or of some other creditable person. The granting of such request shall be at the discretion of the Board in cases of extreme hardship or upon good cause shown.
- (c) In any case, no more than three (3) postponements over a period of ninety (90) days are allowed.

Section 25.54 Hearings - Continuance

The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session.

Section 25.55 Hearings - Decision by the Board; Appeal From Decision by the Board

The Board shall render a decision within thirty (30) days after completion of the hearings. If the decision is not rendered in writing within said period of time, the appeal shall be considered to have been decided in favor of the applicant. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, bureau of the jurisdiction, may appeal the same to the Circuit Court of Washington County in a manner set forth in Section 4.08 of Article 66B of the Annotated Code of Maryland, 1970 Edition. The Court may affirm, reverse, vacate or modify the decision complained of in the appeal.

Section 25.56 Variances³

A variance may be granted by the Board upon a showing of criteria of practical difficulty or undue hardship described below respectively:

A. Practical Difficulty

1. Strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and
2. Denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and
3. Granting the variance would observe the spirit of the Ordinance and secure public safety and welfare.

B. Undue Hardship

1. Strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and
2. The difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and

3. The hardship is not the result of the applicant's own actions.

Section 25.6 Limitations, Guides and Standards⁴

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a permit may be issued, or the Board is called upon to decide certain issues, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted, and shall hear any person desiring to speak for or against the issuance of the permit. However, the application for a permit shall not be approved where the Board finds the proposed building, addition, extension of building or use, sign, use or change of use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall consider any other information germane to the case and shall give consideration to the following, as applicable:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of a community.
- (c) Traffic conditions and facilities.
- (d) The effect of such use upon the peaceful enjoyment of people in their homes.
- (e) The conservation of property values.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (g) The most appropriate use of land and structure.
- (h) Decision of the courts.
- (i) The purpose of these regulations as set forth herein.
- (j) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

Section 25.7 Disapproval of Application

If the application is disapproved, thereafter the Board shall take no further action on another application for substantially the same proposal, on the same premises, until after twelve (12) months from the date of such disapproval.

Section 25.8⁵

⁴ Revision 1, Section 25.6 amended 1/10/89 (RZ-413)

⁵ Revision 5, Section 25.8 deleted 5/19/92 (RZ-92-5)