

# BOARD OF APPEALS OF WASHINGTON COUNTY

## AMENDED RULES OF PROCEDURE

(Adopted July 5, 2006)

### General Governing Rules

The Board of Appeals of Washington County shall be governed by the provisions of all applicable state statutes, local laws, ordinances, and these rules. These rules have been adopted and promulgated pursuant to the Washington County Zoning Ordinance, Section 25.2(e).

### Officers and Duties

#### (1) Chair and Vice Chair

The Board shall elect annually from its members, by a majority vote, a chair, who may be elected to succeed himself or herself. The Board may elect a vice-chair. The chair, or in his or her absence or incapacity, the vice-chair or an acting chair, shall decide all points of order, procedure, and evidence, and may administer oaths and compel the attendance of witnesses.

#### (2) Secretary

In accordance with Section 25.3 of the Zoning Ordinance, the Board shall have a secretary in attendance at all meetings. The secretary shall make a recorded transcript of all proceedings, and shall keep records of all its official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. The secretary shall keep a record of the proceedings of each meeting and each hearing which shall include: the vote of each member on each question or, if absent or failing to vote, indicating such fact; the names and addresses of all witnesses; a summary of the facts on which the decision is based; the decision rendered; and other official actions of the Board.

### Meetings

#### (1) Quorum

A quorum shall consist of three members of the Board.

(2) Time of Meeting

a. Regular meetings shall be held, generally twice per month, on alternate Wednesdays at 7:00 PM, or at such other day and hour as the chair may designate. The first regular meeting in April shall constitute the annual organizational meeting of the Board.

b. Special meetings may be called by the chair at any time provided that at least 48 hours notice shall be given each member before a special meeting is held. The chair shall call a special meeting within 10 days of receipt of a written request from any two members of the Board.

(3) Meetings Public

All meetings of the Board shall be open to the public.

(4) Cancellation of Meetings

Whenever there are no appeals for special exceptions or variances or other pertinent business to be considered at a regular meeting, the chair may dispense with such meeting by so notifying each member at least 48 hours prior to the time set for such meeting:

(5) Order of Business

The order of business shall be:

- a. Introduction of members and others present;
- b. Explanation of quorum and voting;
- c. Public hearings in an order as determined by the Board;
- d. Deliberations;
- e. Other business; and
- f. Adjournment.

(6) Voting and Disqualification of Members

All matters shall be decided by voice vote. All decisions shall require the affirmative vote of three (3) members of the Board present at such hearing. No member of the Board shall sit in a hearing of or vote on any matter in which he or she is personally or financially interested, nor shall he or she vote on any appeal without having attended the hearing thereon.

**Inspection of Property**

When the Board exercises its discretion to view a property subject to appeal pursuant to the Ordinance, the Chair shall designate a time and date for at least two (2) members to inspect the subject property, before or after the hearing, but prior to the Board's determination of the appeal.

**Public Hearings**

(1) Matters Requiring Public Hearings

A public hearing shall be required in all appeals from any order, requirement, decision, or determination made by an administrative official or agency whose duty it is to

enforce planning or zoning ordinances; in all appeals for special exceptions to the Zoning Ordinance; in all appeals from the terms of the Zoning Ordinance; remanded cases from a higher court; and in all other matters in which the Board has jurisdiction. The Board shall exercise the powers granted in Section 25 of the Zoning Ordinance.

(2) Notice of Hearings

No appeal shall be decided until after due notice has been given and a public hearing has been held thereon. Due notice of a hearing shall be as follows:

a. 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.

b. By posting or causing to be posted conspicuously a zoning notice on the property which is the subject of the application or appeal. The zoning notice shall be no less than twenty-two (22) inches by twenty-eight (28) inches in size, and shall be posted at least fourteen (14) days before the date of the hearing.

c. The Board shall mail notice of the hearing to the appellant or applicant or his or her attorney or agent at least fifteen (15) days before the date of the hearing.

d. The Board may also, insofar as practicable, mail notices of the hearing of an appeal to all property owners who adjoin or confront the subject property. Compliance with this subparagraph shall not be a requirement of proper legal notice and no hearing or action taken thereon shall be deemed invalid or illegal because of any failure to mail the notices provided for in this subparagraph.

(3) Postponement of Hearing

A hearing may be postponed by the Board upon the request of a party for good cause. When it is not practicable for the Board as a whole to decide upon a request for a postponement, the Chair of the Board, in his or her sole discretion, may render such a decision.

(4) Conduct of Public Hearings

a. Appearance of Applicant

Any person may appear in person or by agent or attorney at any public hearing. If a person fails to appear either in person, by agent or attorney, the appeal shall be denied.

b. Tardy Appearances

The applicant shall be present and ready to present his or her case within fifteen (15) minutes of the time it is called. If the applicant is not present and ready when the case is called, but appears within fifteen (15) minutes after the case is called, the case can be heard after the case then before the Board if the witnesses are still present. After other witnesses for the applicant's case have been dismissed, the case shall not be heard.

#### c. Order of Proceedings

The order of proceedings in the hearing of each case at a public hearing shall be as follows:

- (1) Reading of the public notice for the hearing by the chair;
  - (2) Presentations by County staff regarding the case;
  - (3) Reading of written comments or reports concerning the appeal, in the discretion of the Board;
  - (4) Sworn testimony of witnesses in favor of the appeal;
  - (5) Sworn testimony of witnesses in opposition to the appeal;
  - (6) Sworn testimony in rebuttal, in the discretion of the Board (The right to rebut and explain adverse testimony may be allowed in the discretion of the Board);
- and
- (7) Closing arguments, if requested by the Board.

#### d. Time Limitations

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

#### e. Evidence

The Board shall determine matters of relevancy, materiality and competency of evidence in its discretion. Property owners, as well as affected parties and the general public, are encouraged to provide input of relevant evidence into the hearings, without the requirement of adherence to strict judicial principles pertaining to the rules of evidence. Hearsay evidence is admissible if credible and of sufficient probative force. It may even be the sole basis for a decision.

#### f. Cross Examination

If hearings are adversarial in nature, witnesses may be cross-examined. A party must request the right to cross-examine a witness or that party shall be deemed to have waived the right to cross-examine.

g. Conclusions of Board Members

Conclusions of Board members shall be based upon the evidence and not upon the opinions of individual Board members.

**Decisions**

**(1) Form of Decisions**

All decisions of the Board of Appeals shall be in the form of written opinions. The basis for the determination of each appeal and the material facts found by the Board from the hearing shall be set forth in the decision and shall constitute a part of the record. The decision may, in the discretion of the Board, also contain conditions and safeguards on any grant of relief to the applicant.

**(2) Time of Decision**

The Board shall render its written decision pursuant to Section 25.55 of the Ordinance.

**(3) Notice of Decision**

A written copy of the decision of the Board shall be mailed to the applicant or his attorney or agent by certified mail, return receipt requested, where the application is denied or where specific conditions are imposed. All other decisions may be sent by regular mail.

**Amendments**

These rules may be amended at any regular meeting by an affirmative vote of not less than four members of the Board, provided that such amendment has been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken.