RULES OF PROCEDURE FOR PROCESSING AND HEARING APPLICATIONS IN ZONING CASES

Chapter A274

Harford County Code

GENERAL REFERENCES
Department of Planning and Zoning -- See Ch. 16, Art. V.
Licenses and Permits -- See Ch. 157.
Zoning -- See Ch. 267.

Adopted February 9, 2016

Rules of Procedure for Processing and Hearing Applications in Zoning Cases

Section A274-1. APPLICATION PROCESS

A. PRE-APPLICATION CONFERENCES. A pre-application conference with the Department of Planning and Zoning is required for all Board of Appeals requests. At the time of the pre-application conference, the Department shall provide written notification to the applicant outlining the Board of Appeals process and the required information to be submitted with the application.

B. FILING. A standard application must be completed and shall contain the information required by Section 704 of the Harford County Charter and other such information as may be required or established at the pre-application conference, to include:

1. A plot plan of the property, drawn to scale, identifying the location of all existing and proposed structures. If the plot plan or other exhibit is larger than 11 inches by 14 inches, either a paper copy not to exceed 11 inches by 14 inches or an electronic copy shall be provided.
2. A list of all adjoining property owners and their mailing addresses, including properties across the street (as provided in subsection 'C' below).
3. Names and addresses of all persons having legal or equitable interest in the property.
4. All required supporting documentation or additional studies including, but not limited to, traffic, environmental impact, lighting or landscaping plans, as may be required.
5. Payment of the required fees as established by the Harford County Code Section 157-25 (Zoning Fees) shall be paid at the time of filing. Appropriate evidence of such payment shall be entered in or appended to the application.
6. An application shall be deemed complete upon payment and acceptance of the required fees by the Department of Planning and Zoning.
7. The file shall include a signed acknowledgement that the applicant received a copy of the current version of the "Rules of Procedure for Processing and Hearing Applications in Zoning Cases".

8. Upon acceptance of the required application and fees, the Department of Planning and Zoning shall immediately transmit an electronic copy of the application and all supporting documents to the Hearing Examiner's office, which shall schedule and advertise. The entire hard copy file shall be transmitted within 5 days and shall be retained by the Hearing Examiner's office until the conclusion of all hearings and/or appeals.

9. If the application is the result of a zoning enforcement action by the Department of Planning and Zoning, information regarding the Code violation(s) and entire enforcement history shall be included in the case file.

10. Reference to any time requirements contained in these Rules shall be in reference to Harford County Charter Section 811(k) unless otherwise specified.

C. ADJOINING PROPERTY OWNERS.

1. In all zoning appeal cases, the application shall include a legible list containing the names and addresses of all adjoining property owners, including owners of property that would be adjoining but for an intervening easement or road, and property that would be adjoining but for intervening property owned by the applicant or an entity controlled by the applicant.

2. All applications for zoning reclassification shall provide a legible list containing the names and addresses of all persons, organizations, corporations, or groups owning land which abuts the parcel and, in addition, the names and addresses of all persons, organizations, corporations, or groups owning land within 500 feet of the parcel or any part of the parcel proposed to be reclassified.

3. Failure to furnish a complete list of all adjoining property owners shall result in additional fees and scheduling delays.

4. If a zoning request affects an area within a one-mile radius of the boundary limits of an incorporated municipality, the Department of Planning and Zoning shall notify the Hearing Examiner's office, who then shall give notice of the date, time, and place of the public hearing to the affected municipality.

Section A274-2. PRE-HEARING PROCESS

A. SCHEDULING OF HEARINGS. The Hearing Examiner shall schedule the public hearing for a zoning case only after the Department of Planning and Zoning certifies that the application is complete and forwards a duplicate application and supporting data to the Hearing Examiner's office, as provided by Section A274-1(B)(8).

B. ADVERTISEMENT OF PUBLIC HEARING. The Hearing Examiner shall give notice of a public hearing, as required by Section 704(b) of the Harford County Charter. The scheduled public hearing shall also be posted on the Zoning Hearing Examiner's website: http://md-harfordcounty.civicplus.com/calendar.aspx?CID=82

C. NOTIFICATION OF PUBLIC HEARING. Notice of the public hearing shall be mailed to the applicant, attorney of record, persons having legal or equitable interest, and all adjoining property owners as listed on the application. The notice of public hearing shall include a statement that the applicant and any interested party have the right to attend the hearing and to request that the Hearing Examiner reasonably use the subpoena powers of the County Council to compel the attendance of witnesses and the production of evidence.

D. POSTING OF PROPERTY. Not less than 30 calendar days prior to the scheduled public hearing, the Department of Planning and Zoning shall conspicuously post each property that is the subject of a zoning appeal or rezoning application with notice of the time and place of the hearing and the relief requested. Following the posting, the applicant shall maintain the notice in a condition visible to the public until the date of the hearing.

E. SUBPOENAS.

1. Requests for subpoenas shall be in writing and shall identify the person or documents to be subpoenaed. Subpoenas shall be requested no later than 15 calendar days prior to the date of the hearing before the Hearing Examiner.
2. Service of a subpoena to a County agency or employee shall be made to the Department Director, and service of all other subpoenas shall be by regular mail or private process.
3. A person subpoenaed to testify or produce evidence may request relief from the subpoena from the Hearing Examiner, who may grant relief upon a finding that justice requires relief in order to protect the person from annoyance, embarrassment, oppression, or undue burden or expense.

4. Denial of a request for relief may be appealed to the Board of Appeals.

5. The Hearing Examiner may refuse to issue a subpoena if it is determined that the information sought is neither relevant nor material to the case. The Hearing Examiner has the discretion to hold a separate hearing on any request to issue a subpoena.

F. STAFF REPORTS.

1. The Department of Planning and Zoning shall prepare a report for each application, setting forth factual information regarding the specific property including, if any, zoning enforcement issues.

2. The Department may request comments from Federal, State and County agencies as deemed necessary. The agencies shall file their comments with the Department of Planning and Zoning within the time stated by the Department, or indicate they have "no comment".

3. All reports and comments shall become part of the record of the zoning case.

4. The Department of Planning and Zoning shall forward the Staff Report and comments received to the Hearing Examiner's Office no later than 20 calendar days prior to the date of the public hearing.

5. A supplemental Staff Report may be issued within 5 calendar days of the hearing, based on additional information received by the Department.

G. PRE-HEARING CONFERENCE. The Hearing Examiner may require the parties to attend a pre-hearing conference in complex cases in order to establish witnesses to be called and exhibit exchange.

H. POSTPONEMENTS

1. All requests for postponement shall be submitted, in writing, to the Hearing Examiner's office, not less than 5 days prior to the scheduled hearing date.

2. Before a request for postponement is made, the requesting side shall confer with the opposition (if known), for agreement.

3. If readvertisement is required, the costs shall be solely paid by the moving party unless the parties agree to an alternative division of costs.

4. Postponements shall be granted in order to reasonably accommodate the parties, witnesses and other interested persons.

Section A274-3. PUBLIC HEARINGS

A. PRESENTATION. Order of procedure in presenting evidence at a hearing in any zoning case shall be as follows:

1. Applicant's case.
2. Staff Report of the Department of Planning and Zoning and testimony of other public agency representatives.
3. Opponent's case.
4. Applicant's case in rebuttal.
5. Opposition's case in surrebuttal.
6. Other evidence.

B. RECORDING OF PROCEEDINGS. The proceedings of the public hearing shall be recorded, verbatim.

C. TESTIMONY. All testimony received at the public hearing shall be under oath, as contained in Rule 1-303 of the Maryland Rules of Procedure. All witnesses shall be subject to cross-examination by the opposing party and questions by the Hearing Examiner. The Hearing Examiner shall have the right to terminate or limit cross-examination in order to eliminate redundant, irrelevant or oppressive questioning.

D. REGISTER OF HEARING ATTENDEES. All attendees at the public hearing shall register by name, postal address and/or email address. Such registration must be legible; otherwise, further mailings of notices shall automatically be waived. All notices thereafter shall be sent by email, unless no email address was provided.

Section A274-4. HEARING EXAMINER

A. POWERS AND DUTIES. It shall be the duty of the Hearing Examiner to inquire fully as to the facts of all referred cases. The Hearing Examiner shall have the following powers and duties with respect to such cases:

1. To administer oaths.
2. To receive and take testimony.
3. To rule upon offers of proof and objections to evidence.
4. To receive stipulations of evidence by the parties. Such stipulations shall be regarded as fact and used as evidence at the public hearing.

5. The Hearing Examiner shall not be an advocate for the position of any party and shall remain neutral throughout the case.
6. To utilize the subpoena powers of the Council, per Section 704(d) of the Harford County Charter, including on the Hearing Examiner's own motion, to compel the attendance of witnesses, and to require the production of records and other materials.
7. To adjourn, continue, or grant extensions of time for compliance with these rules.
8. To dispose of procedural requests or similar matters.
9. To call and examine witnesses, and to accept relevant evidence. The Hearing Examiner may decline unduly repetitive or cumulative evidence.
10. To keep a record of all persons requesting notice of the decision in each case.
11. To request post-hearing legal memorandum from the parties.
12. Documents or correspondence received after the close of the record shall not be included in the file or considered by either the Hearing Examiner or the Zoning Board of Appeals.

B. DISQUALIFICATION OF HEARING EXAMINER. In any case where the Hearing Examiner has a conflict, the case shall be heard by another Hearing Examiner. Should all Hearing Examiners be disqualified, the Council Attorney shall hear the case.

C. HEARING EXAMINER'S DECISION

1. The Hearing Examiner shall file a written decision within 30 calendar days after the conclusion of the hearing or, if relevant, the deadline for submission of post-hearing memoranda.
2. All persons who registered at the hearing shall be notified, by email or regular mail, of the Hearing Examiner's decision. The decision shall also be posted on the Hearing Examiner's website: http://www.harfordcountymd.gov/1569/Zoning-Board-of-Appeals-Cases
3. The Hearing Examiner's decision shall become the final decision of the Board of Appeals unless a written request for final argument is received by the Council Administrator within 20 calendar days of the date of the decision.

Section A274-5. HEARINGS BEFORE THE BOARD OF APPEALS

A. REQUEST FOR FINAL ARGUMENT.

1. A request for final argument may be filed by the applicant, the People's Counsel, a person aggrieved who registered at the proceedings before the Hearing Examiner, or any Board Member.
2. After a request for final argument is filed, the applicant shall be notified of the requirements of this Section. Notification shall be by email if address was provided by the applicant; otherwise, by regular mail.
3. The applicant shall order the transcript of proceedings before the Hearing Examiner within 20 calendar days of the request for final argument. Arrangement for payment and filing of the transcript shall be made directly with the Court Reporter.
4. A fee for advertising the final argument hearing, as determined by the Council Administrator, shall be paid within 20 calendar days of the request for final argument.
5. If the transcript is not filed within 60 calendar days of the date final argument is requested, the application shall automatically be considered to be denied by the Board. The period for filing the transcript may be extended by the Council Administrator upon a showing of good cause, in writing, prior to the expiration of the 60 calendar days filing deadline.

B. SCHEDULING OF FINAL ARGUMENT AND AUTOMATIC DENIALS.

1. Final argument shall be scheduled upon the completion of all of the following:
   a. a request for final argument filed within the 20 day appeal period of the Hearing Examiner's decision;
   b. the complete transcript of the testimony presented before the Hearing Examiner is filed with the Council Administrator; and
   c. the additional advertising fees are paid.
2. Commencing on the date when the last requirement has been satisfied, final argument shall be scheduled to be heard within 60 calendar days.

3. A zoning request shall automatically be considered to have been denied in the event:

   a. the Board does not hear the final argument;

   b. the Board does not render a decision within 90 calendar days from the conclusion of the final argument hearing by the Board.

C. NOTICE OF FINAL ARGUMENT.

1. The Council Administrator shall give notice of a public hearing, as required by Section 704(b) of the Harford County Charter. The scheduled final argument hearing shall also be posted on the County Council's Public Meeting Calendar website: http://www.harfordcountymd.gov/calendar.aspx?CID=102,

2. Written notice of the final argument hearing shall be given to the applicant, attorneys of record, and all persons who registered at the proceedings before the Hearing Examiner.

D. REVIEW OF THE RECORD BY THE BOARD.

1. Final argument shall be based solely on evidence in the record.

2. The record in all zoning cases shall include the application, all documents and communications submitted for the consideration of the Hearing Examiner, the recorded testimony received at the public hearing, any reports or communications to or from any public official or agency concerning the application, and the decision of the Hearing Examiner.

3. The Board shall review the record of the case before final argument. Each member shall sign and date a statement certifying that he or she has reviewed the record, and shall be included in the file.

E. DECISION OF THE BOARD. The Board may accept, reject, or modify the Hearing Examiner's decision, or remand the case to the Hearing Examiner for the submission of additional evidence. If the case is remanded, the Board shall specify the subject(s) on which the Hearing Examiner is to receive additional evidence.

F. FINDINGS OF FACT AND CONCLUSIONS OF LAW. The Board's decision in a zoning case may be the same as the decision of the Hearing Examiner, or it may be based on different findings of fact and conclusions of law. The Board's decision shall be in writing, reflect the vote of the Board, and contain specific findings of fact and conclusions of law.

G. NOTIFICATION OF THE BOARD'S DECISION. Written notice of the Board's action, including automatic denials, shall be given to the applicant, attorneys of record, and all persons who registered at the proceedings before the Hearing Examiner.

H. REMAND.

1. In the event a case is remanded either to the Hearing Examiner by the Board of Appeals, or to the Board of Appeals by the Courts, written notice shall be given to the applicant of the requirement of additional advertising fees, as determined by the Council Administrator, prior to the remand hearing being scheduled.
2. Written notice of the remand hearing shall be given to the applicant, attorneys of record, and all persons who registered at the proceedings before the Hearing Examiner.
3. If the applicant fails to pay the advertising fee within 15 calendar days of the notice of remand, the case will be dismissed without prejudice.

Section A274-6. APPEALS FROM FINAL DECISIONS

Appeals from the decision of the Board shall be filed with the Circuit Court in accordance with Section 709 of the Charter and Rule 7-201 et seq. of the Maryland Rules.

Section A274-7. CUSTODY OF ZONING FILES

A. The Hearing Examiner shall retain the entire zoning case file and all documents received from the Department of Planning and Zoning.

B. Review of case files shall be permitted during normal business hours. Removal of any file is not permitted, but copies may be obtained, upon payment of the applicable copy charge.

C. Case files shall be returned to the Department of Planning and Zoning following the expiration of all appeals.

D. Exhibits may be reclaimed by the applicant or representative after the Hearing Examiner's decision becomes final and/or all appeals are exhausted.

E. Should the case be appealed, the Hearing Examiner is relieved of any duty or responsibility in the matter until the case file is returned from the Board or Appellate Courts.

ADOPTED: February 9, 2016