

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

Title 1. In General

- 1-101. Scope.
- 1-102. Officers.
- 1-103. Meetings.
- 1-104. Administrative matters.
- 1-105. Computation of time.
- 1-106. Hearing Examiner.

Title 2. Commencement of Action

- 2-101. Appeals.
- 2-102. Docket and calendar.
- 2-103. Fees.
- 2-104. Notice of hearing.
- 2-105. Appearance and practice.

Title 3. Prehearing Procedure

- 3-101. Other pleadings.
- 3-102. Withdrawal.
- 3-103. Request for postponement.
- 3-104. Prehearing procedure.
- 3-105. Depositions and discovery.

Title 4. Hearings

- 4-101. Conduct of hearings.
- 4-102. Disqualification of Board members.
- 4-103. Subpoenas.
- 4-104. Evidence.
- 4-105. Findings and conclusions.

Title 5. Appeal

- 5-101.1. Appeals from decisions of the Board.

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

TITLE 1. IN GENERAL

Rule 1-101. Scope.

The rules of practice and procedure set forth in this appendix are generally applicable to cases and proceedings before the St. Mary's County Board of Appeals, and shall apply to pending cases whenever practical and consistent the requirements of due process. "Applicant" shall refer to an applicant for a variance or conditional use approval. "Appellant" shall refer to a party appealing a decision of an administrative decision. "Board" shall refer to the St. Mary's County Board of Appeals.

Rule 1-102. Officers.

(a) **Generally.** The Board shall elect one of its members as Chair and one as Vice Chair at the pleasure of the Board. The Chair shall preside at all meetings of the Board, and in the Chair's absence the Vice Chair shall preside. In the absence of the Chair and the Vice Chair, a member designated by the remaining members of the Board shall act as Chair and shall preside with all the powers of the Chair.

(b) **Staff members.** All County staff providing support to the Board shall report directly to the Chair of the Board. The Chair shall assign to various staff their functions and duties.

Rule 1-103. Meetings.

(a) **Frequency.** Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine.

(b) **Quorum.** Three members of the Board shall constitute a quorum for the conduct of business. Site visits pursuant to Rule 4-101(g) are not governed by this rule.

(c) **Minutes.** 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 Department of Land Use and Growth Management as a public record after approval by all Board members.

(d) **Participation in decision.** 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, except that the Chair of the hearing shall have the ability to permit a member to listen to the official video recording for any missed hearing or any missed portion of a hearing, as applicable, and participate in the decision. In no event shall a member be permitted to participate in a decision if that member misses and fails to view the first hearing on any appeal.

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

Rule 1-104. Administrative matters.

(a) **Duties of the Clerk.** The Director of Land Use and Growth Management, or the Director's designee, shall act as the Clerk of the Board. 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) **Docket and minute book.** The Clerk shall keep a docket and minute book. The Clerk shall docket the case in the name of the original applicant, note the name of the appellant in an appeal, and include a short description of the subject matter of the case and the number assigned to the case. A brief description of the property shall also be included.

Rule 1-105. Computation of time.

(a) **Generally.** Time must be computed as follows:

(1) Do not count the day of the event that begins a time period (e.g. the day of a decision).

(2) Include the last day of a time period unless it falls on a Saturday, Sunday, or County holiday, or day on which the County is not open during its regular hours. In that case the time period ends on the next business day.

(3) If the required time period is more than seven days, count Saturdays, Sundays, and County holidays as days and days on which the County is not open during its regular hours. If the time period is seven days or less, do not count Saturdays, Sundays, or County holidays, or days on which the County is not open during its regular hours.

(b) **Computation of latest day.** In determining the latest day for performance of an act which is required by these rules, by order of the Board, 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.

Rule 1-106. Hearing Examiner.

(a) **Referral.** At any time prior to the introduction of evidence in a proceeding, the matter shall be referred to a Hearing Examiner at the request of the Chair, or the County Attorney, or the Director of the Department of Land Use and Growth Management.

(b) **Proceedings.** After referral a Hearing Examiner shall rule on all procedural matters, hear and receive evidence according to the standards set forth in the Rules of Procedure of the St. Mary's Board, make findings of fact, state conclusions of law, and recommend an action by

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

the Board , and shall report such findings, conclusions, and recommendation to the Board . After referral, and until filing the report to the Board, all references to the Board, the Chair and members of the Board in Rules 3-103, 3-104, and 4-101 through 4-104 shall be deemed to refer to the Hearing Examiner. The Clerk to the Board shall serve a copy of the Hearing Examiner's decision on the parties.

(c) **Record.** All proceedings conducted by the Hearing Examiner shall be recorded. All testimony and documentary evidence received by a Hearing Examiner shall be transmitted to the Board .

(d) **Exceptions.** Any party may file exceptions to the decision of the Hearing Examiner within 15 days after the date of the mailing of the decision to the parties. Exceptions shall include the following information:

- (1) the title of the case;
- (2) the name of the applicant or appellant;
- (3) the case number;
- (4) the date of the public hearing before the Hearing Examiner;
- (5) the date of the decision;
- (6) a copy of the decision; and
- (7) a specific statement of the basis for the exception.

(e) **Board decision.** The Board, whether or not exceptions have been filed, (i) may adopt the findings, conclusions and recommendation of the Hearing Examiner, or (ii) adopt different findings or conclusions based on the record of proceedings before the Hearing Examiner, or (iii) for good cause, hear the matter *de novo*.

(f) **Review of decisions where applicant did not appear.** If the Board determines that the Hearing Examiner's decision was based on the failure of the applicant or appellant to appear either in person or by representation, the Board first shall determine if the decision of the Hearing Examiner to dismiss the application was proper. If the Board determines that the decision of the Hearing Examiner to dismiss the application or appeal was not proper, the Board shall proceed to hear the case on its merits.

TITLE 2. COMMENCEMENT OF ACTION

Rule 2-101. Appeals.

(a) **Time limit.** 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 Clerk of Board .

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

(b) **Notice of appeal from administrative decisions.** 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) the map and parcel number of the subject property;
- (3) names and mailing addresses of owners of real property entitled to notice under the Comprehensive Zoning Ordinance;
- (4) the name of the applicant;
- (5) a copy or other written evidence of the decision from which the appeal is taken; and
- (6) a specific statement of the basis for the appeal.

(c) **Information to be provided to Board.** Any required information omitted from the notice of appeal shall be provided in writing to the Board's office within 30 days of the date an appeal is filed. In a case where the information is not so submitted, the Board may dismiss the appeal.

Rule 2-102. Docket and calendar.

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

(b) **Order of hearing matters.** Applications and 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.

Rule 2-103. Fees.

An application or notice of appeal may be accepted by the Clerk of the Board only when accompanied by the relevant fee listed on a published schedule of fees.

Rule 2-104. Notice of hearing.

(a) **Generally.** Notice of the hearing of an application or appeal shall be given by mailing and posting of the property in accordance with the Comprehensive Zoning Ordinance. Notice shall be given to:

- (1) the applicant or appellant or the applicant's or appellant's attorney if the applicant or appellant is represented by an attorney, at the address stated in the application or notice of appeal;
- (2) in an appeal, the original applicant or the original applicant's attorney;
- (3) in an appeal, other parties of record;

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

- (4) the County Attorney; and
- (5) other interested parties as the Board may deem appropriate.

(b) **Publication.** Notice of the hearing of any application or appeal shall be published as required by the Comprehensive Zoning Ordinance. The Clerk shall post the notice on the County's website when the hearing date is set.

Rule 2-105. Appearance and practice.

(a) **Persons who may appear.** 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. A licensed engineer or land surveyor may represent an applicant for a variance or conditional use. A representative shall file with the Clerk of the Board a written authority to represent the applicant.

(b) **Attorneys.** 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) **Limitation on who may appear.** A person, firm, or corporation shall not be represented in any hearing except as provided above.

(d) **Formal notice of appearance.** 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 Clerk of the Board 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 application or notice of appeal contains the required information.

TITLE 3. PREHEARING PROCEDURE

Rule 3-101. Other pleadings.

No other pleadings or papers shall be required from the applicant or 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. Any memorandum submitted by an attorney shall be filed at least 10 days prior to the hearing, unless otherwise directed by the Board.

Rule 3-102. Withdrawal.

(a) **Generally.** An applicant may withdraw an application at any time. An appellant may withdraw an appeal at any time within 30 days of the date of the order or decision being appealed.

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

A request for withdrawal by an appellant shall be in writing and the Board shall serve a copy on:

- (1) the Hearing Examiner or other official whose decision is being appealed;
- (2) the County Attorney; and
- (3) all parties of record to the case and their attorneys.

(b) **Effect of withdrawal.** A withdrawal by an appellant pursuant to subsection (a) 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.

(c) **Withdrawal after 30 days.** 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 entitled to notice of the hearing on the appeal, or if granted permission to withdraw by the Board upon good cause shown.

Rule 3-103. Request for postponement.

(a) **Generally.** Any party to a case may, on the record or in writing, request a postponement of a scheduled hearing. A request for postponement may not be granted except for good cause shown.

(b) **Form of request; decision.** A written request for postponement shall state 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 written requests shall be mailed to all parties and attorneys of record and to the County Attorney. The request for postponement shall be decided by the Chair.

(c) **Six month limit.** The Board shall hear a case within six months from the date of the filing thereof, unless the Board waives this requirement upon good cause shown.

Rule 3-104. Prehearing procedure.

(a) **Generally.** There shall be no prehearing procedure before the Board 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;

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

- (5) request for withdrawal of an appeal pursuant to Rule 3-102; or
- (6) pre-hearing conference at the direction of a Hearing Examiner.

(b) **Ex parte communications.** 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 Board 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.

Rule 3-105. Depositions and discovery.

There shall be no depositions or discovery, unless ordered by the Board .

TITLE 4. HEARINGS

Rule 4-101. Conduct of hearings.

(a) **Generally.** All hearings before the Board shall be public. No hearing shall be private even though all parties agree. All witnesses shall testify under oath, administered by the Chair, acting Chair or other person legally qualified to administer oaths. 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 case.

(b) **Stenographer and transcripts.** The Board shall provide for the audio visual recording of all proceedings. Anyone desiring a copy of the proceedings or a transcript of the testimony may obtain a copy from the official recorder or stenographer and shall bear the full cost. The Board is not required to furnish a recorder or stenographer during an on-site inspection conducted pursuant to subsection (g).

(c) **Continuance.** A continuance, if requested by any party, may be granted by majority vote of the Board for good cause shown. Unless the proceeding is continued to a time and place announced on the record at the time the matter is continued, and in any event if a case is continued for more than 60 days, the case shall be readvertised at the sole expense of the party requesting the continuance.

(d) **Presentation of evidence.** Evidence at the public hearing on an application shall be presented first by the County agency involved, then by the applicants, then by persons in opposition, and lastly in rebuttal by the applicants, unless otherwise designated by the Board. Evidence at the public hearing in an appeal shall be presented first by the appellant, then by the County agency involved, then by persons in opposition, and lastly in rebuttal by the appellants, unless otherwise designated by the Board. There shall be no other presentation of evidence

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

unless requested by the Board.

(e) **Hearing procedures.** The Chair 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) **Recess.** A hearing may be recessed from time to time for good cause shown and if the time and place of the resumption of the hearing is announced publicly. No further notice of the recessed hearing shall be required.

(g) **Site visits.** 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 failure of a party or representative to be present at the time and place designated for the site visit shall constitute a waiver of the right to be present. 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.

Rule 4-102. Disqualification of Board members.

(a) **Disqualification.** 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 the St. Mary's County Public Ethics Ordinance 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 the St. Mary's County Public Ethics Ordinance 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

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

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

(c) **Disqualification.** 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 case 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 case shall decide by majority vote whether or not the member shall be disqualified.

Rule 4-103. Subpoenas.

(a) **Powers of the Board.** The Board shall have the power to issue, in its discretion, subpoenas to compel the appearance of witnesses, and to require the production of documentary or other tangible evidence, at a proceeding.

(b) **Issuance.** 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 case; 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) **Procedures.** The party requesting a subpoena shall be responsible for service of the subpoena and payment any fee for service imposed by the Sheriff.

Rule 4-104. Evidence.

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

(b) **Documentary evidence.** Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. Exhibits and plats admitted into evidence may not be mounted and shall be folded to a maximum size of nine inches by 14 inches. An exact duplicate of the exhibit may be mounted and used for presentation. A witness testifying from or

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

concerning an exhibit shall refer to the Exhibit number.

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

(d) **Authority to testify.** The Chair 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.

(e) **Expert witnesses.** The Chair may admit the testimony of witnesses on the basis that their testimony, in the form of an opinion or otherwise, will assist the Board in understanding evidence or determining a fact at issue. Formal qualification as an expert shall not be required. However, in making the decision to admit testimony, the Chair shall consider (1) whether the witness is qualified as an expert by knowledge, skill, experience, training or education; (2) the appropriateness of the testimony for the particular case; and (3) whether sufficient facts exist to support the testimony.

(f) **Referral to the Board.** The Chair may refer any ruling for a majority vote by the members of the Board.

Rule 4-105. Findings and conclusions.

(a) **Generally.** Within 60 days after the termination of the hearing, the Board shall prepare and file in the proceedings a written succinct order, 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) **Revisions and corrections.** At any time within 30 days after the filing of the order and in the absence of an appeal to the Circuit Court for St. Mary's County, the Board may revise and submit a written order to correct clerical or other errors of form, providing such corrections make no change of substance in the memorandum. The revised order shall be furnished to all parties and attorneys of record.

(c) **Reconsideration.** Upon motion by a party filed within 30 days after the filing of the order and in the absence of an appeal to the Circuit Court for St. Mary's County, the Board may, by a majority vote of the members of the Board, reconsider the Board's decision and amend or alter its decision and order, remand the matter to a Hearing Examiner for a new hearing, or order a new hearing before the Board. A new hearing may include matters of fact, arguments of law, or both, in the discretion of the Board.

(d) **Copies of decisions.** The Board shall furnish copies of all orders and opinions to

Rules of Practice and Procedure of the St. Mary's County Board of Appeals

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.

TITLE 5. APPEALS

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

(a) **Generally.** All appeals from decisions of the Board shall be in accordance with the provisions of the Maryland Rules of Procedure. The Office of the County Attorney shall give notice of the appeal, file the certificate of compliance and transmit the record in accordance with the provisions of Maryland Rules of Procedure.

Adopted: September 8, 2011

/s/ J. Howard Thompson
J. Howard Thompson, Chair

Approved as to form
and legal sufficiency:

/s/ George R. Sparling
George R. Sparling
County Attorney