

**RULES OF PROCEDURE OF THE
ST. MARY'S COUNTY BOARD OF ZONING APPEALS**

I. GENERAL.

- A. The Rules of Procedure , (the “Rules”), of the St. Mary’s County Board of Appeals (hereinafter referred to as the “Board”) are supplementary to requirements set forth in the St. Mary’s County Code and St. Mary’s County Zoning Ordinance, which should be reviewed for additional procedural requirements.
- B. In the event any provision of the Rules contradicts any provisions of the St. Mary’s County Code or the St. Mary’s County Zoning Ordinances, the provision in the latter shall control.

II. ORGANIZATION.

- A. The members will designate by majority vote one member to be Chairperson and another person to be Vice-Chairperson on the first meeting in January each year. The Chairperson will have the duty and responsibility for scheduling of hearings and meetings; for ruling on preliminary matters of a procedural nature; and for evidentiary matters at hearings. The Chairperson may delegate the duty of scheduling of hearings and meetings to the Clerk of the Board.
- B. The Director of the St. Mary’s County Department of Land Use and Growth Management will be the ex-officio Clerk to the Board in all matters, it will be the custodian of the record of proceedings, and will maintain the docket in each case. The St. Mary’s County Department of Land Use and Growth Management will appoint a Clerk of the Board, who will be responsible for recording the proceedings.
- C. The County Attorney, or his/her designee, shall serve as the legal advisor to the Board. The County Attorney or a designee shall attend all of the Board’s meetings, unless excused by the Chairperson.

III. SESSIONS AND HEARINGS.

- A. The Board will hold such sessions and hearings as may, from time to time, be scheduled by the Chairperson or his/her designee.

B. The Board may conduct such preliminary hearings as are deemed necessary by the Chairperson. The Board may meet in a closed session for any reason as allowed by the St. Mary's County Open Meetings Act, codified at Article 24 §4-201, et. seq. of the Maryland Annotated Code. However, all hearings shall be held in open public session and no evidence, argument, or other matter, shall be received by the Board in a closed session. All evidence shall be presented to the Board in hearings open to the public. The hearings will be electronically recorded.

IV. PLACE AND TIME OF HEARINGS.

The Board hearings will be held at a location scheduled by the Chairperson or his/her designee. The parties will be notified of the hearing time and date, in writing, within sixty (60) days of receipt of an application. The Clerk of the Board shall attempt to notify the Applicant(s) of the hearing date at least twenty-one (21) days prior to the same. This time period shall not be considered jurisdictional and shall not apply to continuances or postponements.

V. RECORD OF HEARINGS.

The Board will cause to be prepared an official record of its proceedings in each case, which shall include all testimony and exhibits, but it will not be necessary to transcribe the testimony unless requested for court review, or when requested by any party in interest appearing at the hearing. The party taking the appeal or ordering the record must address such request to the Clerk of the Board, and shall either pay the Clerk of the Board or Reporter, in advance, the cost of transcribing the record, or pay such deposit as is required by the Clerk of the Board or Reporter. The Reporter shall certify the accuracy of such transcript.

VI. PUBLIC ATTENDANCE.

The general public is encouraged and invited to attend Board hearings. All persons attending a Board hearing must maintain order and refrain from disturbing the orderly process of the hearing. In the event of a disruption, the Chairperson may, in the Chairperson's discretion, clear the hearing room of offending persons, or recess the hearing.

VII. CONDITIONAL USES AND VARIANCES, INCLUDING ENLARGEMENT, EXTENSION, OR MODIFICATION; OR EXTENSION OR ENLARGEMENT OF ANY NON-CONFORMING SITUATION.

A. Form and Contents of Original and Renewal Applications.

1. The form and content of applications shall be as prescribed by the Board. Application forms will be made available to the public through the St. Mary's County Department of Land Use and Growth Management. It is the responsibility of the St. Mary's County Department of Land Use and Growth Management to certify that such applications are adequately completed before any application may be considered by the Board. The Applicant shall submit the required number of copies of a recorded plat, no smaller than 18" by 24" in size, showing: (1) the land for which the conditional use or variance is sought, outlined in red; (2) the bordering properties, streets and street names; (3) lot and block designations, if any; (4) north point and scale; (5) site location or vicinity map; (6) adjacent property owners; and (7) any other pertinent information, such as rendered drawings of building elevations and computer modeling and simulations. If no recorded plat exists, the deed to the property shall be submitted. In addition, the Applicant shall submit the required copies of a site plan, no smaller than 18" by 24" in size, showing: (1) ways of ingress and egress; (2) proposed screening and buffer zones; (3) existing and/or proposed streets; and (4) parking configuration.

2. Renewal applications require the same form as noted in Section VII.A.1 above. A complete renewal must be applied for and accepted by the St. Mary's County Department of Land Use and Growth Management prior to the expiration date stated in the original decision and order, however, the Board hearing need not occur prior to that expiration. So long as a renewal application is complete and accepted prior to expiration of the original decision, the expiration date of the original decision and order is extended until the renewal application is ruled upon by the Board.

B. Notice to the Public.

1. Providing all of the information necessary for notice of all public hearings required hereunder shall be the responsibility of the Applicant and shall be in the form established by the Planning Director and subject to the approval of the Planning Director pursuant to the standards and requirements of this section. The responsibility of assuring compliance with the advertising, posting and mailing requirements of this section shall be on the Applicant. Should a dispute

arise as to whether there has been compliance with the advertising, posting, or mailing requirements of this Section, it shall be the Applicant's burden to establish the compliance. If the Board determines that the Applicant has made a good faith effort to comply with the requirements of this Section, the Applicant shall be afforded a reasonable opportunity to correct the non-compliance. If the Board determines that the Applicant has not made a good faith effort to comply with the requirements of this Section, the Board may dismiss the application.

(a) At least 15 calendar days in advance of the public hearing on an application for Conditional Use Approval or Variance Approval, the Department of Land Use and Growth Management shall give notice of such public hearing. Notice shall be published in a newspaper of general circulation in St. Mary's County once each week for two successive weeks.

(b) At least 15 calendar days in advance of the public hearing on an application for Conditional Use Approval or Variance Approval, the applicant shall send notice by registered or certified mail in a format provided by the County to all owners of contiguous property, (as shown on the latest published property tax records of the Maryland Department of Assessment and Taxation), including lands across any public or private rights-of-way adjacent to the land subject to the application. Notice shall be given to each individual property owner if an affected property is held in common ownership. Required notice shall also be given to a municipality if the application

concerns land adjacent to its municipal boundaries. The Applicant shall provide the Planning Director, in an approved form, names and addresses of all property owners required to receive notice of a public hearing pursuant to this Ordinance. The Applicant shall file, with the St. Mary's County Planning Director, an affidavit of mailing of such notice as an exhibit in the public hearing prior to 4:30 p.m. on the day of the hearing, and in no case after the commencement of the hearing. The notice for any public hearing or meeting to be mailed required by this section shall state the substance of the application and the date, time and place of the public hearing or meeting, and the place where such application may be inspected by the public. The notice shall also

advise that interested parties may appear at the public hearing or meeting and be heard with respect to the application.

- (c) At least 15 calendar days in advance of the public hearing, the property(ies) subject to an application shall be posted by the applicant with a notice on a block printed sign at least 24" x 36". The Applicant shall notify the Department of Land Use and Growth Management the same day notice is posted and file, with the St. Mary's County Planning Director, an affidavit certifying the posting of said sign(s) as an exhibit at the public hearing prior to 4:30 p.m. on the day of the hearing and in no case after the commencement of the hearing.**
- (i) Posted notice shall contain the following information: (1) Application number and property owner name; (2) the nature and a fair summary of the request (as defined by the Department of Land Use and Growth Management); (3) the date, time, and location of the hearing; and (4) a statement that the file is available during normal business hours at the Department of Land Use and Growth Management for public review and comment.**
- (ii) One notice shall be posted for each five hundred feet of frontage along a public street. The sign(s) shall be located on the property no more than 25 feet from the front property line and shall be clearly visible from the nearest public road or street. Where the land does not have frontage on a public street, signs shall be posted within the nearest street right-of-way with an attached notation indicating generally the direction and distance to the land subject of the application.**
- (iii) The sign shall be removed by the Applicant after the hearing on the application is concluded. If the sign is removed through no fault of the applicant before the hearing, such removal shall not be deemed a failure to**

comply with the standards, nor be grounds to challenge the validity of any decision made on the application.

VIII. ADMINISTRATIVE APPEALS.

- A. Appeals from any final order or decision of an administrative official, where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of this article or of any ordinance adopted pursuant to *Article 66B* of the Maryland Annotated Code, may be taken to the Board by any person aggrieved by any decision of an administrative officer or any officer, department, board, or bureau of the jurisdiction affected by any decision of an administrative officer. Generally, a person aggrieved by an administrative decision is the one whose personal or property rights are adversely affected by the decision. An adjoining, confronting or nearby owner is deemed to be specially damaged and, therefore, may be a person aggrieved. A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved. An Appeal is taken by filing a written notice of Appeal with the Planning Director and the Board specifying the grounds therefor, within thirty (30) days after the date of the administrative decision from which Appeal is taken. The time period for filing an appeal on the merits of a decision of the Planning Commission shall be tolled for the period of the pendency of the a request for reconsideration when such request for reconsideration is made of the Planning Commission as prescribed in the Planning Commission's Rules of Procedure. That is, the total period in which an aggrieved person has to file an appeal of a Planning commission decision is thirty (30) days plus the time from which that person files a request for reconsideration until the Planning Commission reaches a final decision on that request, if such a request for reconsideration is made.
- B. The Board may reverse or affirm in whole or in part, or may modify, the order, requirement, decision, or determination appealed from and may make the order, requirement, decision, or determination, that in its opinion, ought to be made in the case before it. To this end, the Board shall have all the powers of the administrative official from whom the appeal was taken.

IX. FEES.

- A. A filing fee will be charged by the Board for processing any Appeal; conditional use; enlargement; extension or modification of a conditional use; variance; extension enlargement of any non-conforming situation; or a motion for reconsideration.
- B. The appropriate filing fee will be established in the “Schedule of Fees and Charges” adopted by the Board of County Commissioners for St. Mary’s County, Maryland.
- C. Fees will be paid by the Applicant at the time any application, petition or Appeal is submitted. All checks should be made payable to the “County Commissioners for St. Mary’s County” In all cases, the Applicant will be liable for the payment of all fees once the application has been processed and distributed for review by individuals and agencies.

X. CONTINUANCES AND RESCHEDULING OF HEARING.

Those cases which have not been concluded may be continued to a day and time fixed by the Board, and it will not be necessary to re-advertise or re-post the property in matters related to zoning or re-advertise in other matters. The time and place of any continuance will be announced immediately prior to the suspension of the pending proceeding. In situations where a continuance has been granted for an indefinite period, it shall be necessary to re-advertise, and re-post the property and notify adjoining property owners in accordance with these Rules of Procedure and the Zoning Ordinance. Through the Clerk of the Board, the Applicant has fourteen (14) days from the date on the tentative schedule letter to accept or decline and request a new tentative date. If the Applicant does not respond in the allotted time, the Clerk will assume the Applicant has accepted. Once the tentatively scheduled date has been accepted, the Chairman may grant the request for rescheduling depending on the Board caseload and the effect on the scheduling of other cases. After the formal public-notice process has begun, the Applicant must formally request a continuance and pay the filing fee adopted by the Board of County Commissioners for St. Mary’s County in the schedule of fees.

XI. EVIDENCE.

- A. The Board will conduct hearings in a manner best calculated to afford all parties an opportunity to present their positions and to serve the ends of justice and fairness.

- B. Evidence which would be admissible under the rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the Board. The Board will not be bound by the technical rules of evidence but will apply such rules so that probative evidence may be conveniently adduced. The Board may exclude immaterial or unduly repetitious evidence, may limit the number of witnesses when testimony is cumulative in nature, and may limit the time permitted for each witness's testimony.
- C. Upon the request of any party or upon its own motion, the Board, as a body, may conduct an on-site inspection of the property that is the subject of the appeal. When it deems an inspection is appropriate, the Board shall recess the hearing and reconvene at the site at an announced time to be determined by the Board. Parties and their representatives may be present to observe, but no testimony may be taken. The parties and their representatives are prohibited from engaging in any discussion with Board members at the on-site inspection. Board members are prohibited from engaging in any discussion with the parties or their representatives at the on-site inspection. A quorum of the members hearing the appeal shall be present to reconvene the hearing at the site. A Board member, who is unable to participate in the on-site inspection at the time announced, may inspect the property at a time other than that announced, with the permission of the Chairman, so long as the Board member is accompanied by at least one other Board member. Where a hearing was reconvened to the site, a Board member who has not conducted an on-site inspection of the property, either with the quorum or with another Board member, prior to the Board's vote on the appeal may not participate in the decision.
- D. Notwithstanding the foregoing individual members of the Board may conduct on-site inspection of the property on his or her own without other members of the Board being present. No testimony or evidence shall be taken or presented. The Board members are prohibited from engaging in any discussion with the parties and their representatives at the on-site inspection. The Parties or their representatives are prohibited from engaging in any discussion with Board members at the on-site inspection.
- E. The Board will not recognize or qualify "expert witnesses" but will hear witnesses and give weight to their testimony, as the Board deems appropriate to the knowledge

of the witness. Nothing contained in this Rule is intended to prohibit any person from expressing an opinion on any matter about which he or she may testify.

- F. All public records, previous Board cases, public and local laws and regulations of St. Mary's County which pertain to the particular case may be reviewed by the Board for its consideration.
- G. Ex parte communication in any form or manner is prohibited. The Board may, upon proper motion and upon sufficient evidentiary showing, take an appropriate action it deems necessary upon discovering ex parte communication pertaining to a pending matter.

XII. APPEARANCE(S) BEFORE THE BOARD OF APPEALS.

- A. Any individual who is a party to a proceeding before the Board may appear in his/her own behalf. Any member of a partnership may appear as representing said partnership, if it is a party. A duly authorized representative of a corporation, trust, or an association may appear as representing said body, if it is a party. A duly authorized representative or an employee of any political subdivision or body or department may appear to represent the same in any proceedings before the Board.
- B. Any party may be represented in any proceeding by an attorney admitted to practice before the Court of Appeals of Maryland.

XIII. APPEARANCE AND TESTIMONY BY REPRESENTATIVE OF CIVIC OR IMPROVEMENT ASSOCIATIONS.

- A. Before any person may testify on behalf of any civic or citizens association, he/she must state the number of members in the association and the geographical limits of the association.
- B. Before any such person may testify as a representative, it must be shown that he/she is authorized to speak for and present the views of the civic or improvement association.
- C. Such authorization may consist of presenting at the hearing or prior thereto, a resolution duly adopted by the association, signed by the president or attested by the secretary.

XIV. CONDUCT OF BOARD OF APPEALS HEARINGS WHERE BOARD ACTS PURSUANT TO ITS ORIGINAL JURISDICTION.

- A. All persons testifying, making statements or asking questions, shall be required to give his/her name and address and take the following oath given by the Chairperson or the Clerk to the Board:

“Do you declare and affirm under the penalty of perjury that the testimony, responses and statements you may give will be the whole truth and nothing but the truth?”

- B. The following shall be the order of presentation:

1. Opening statements.
2. Applicant's/Appellant's presentation:
 - a. Statement of case.
 - b. Certification that proper notice was given pursuant to the St. Mary's County Zoning Ordinance and these Rules of Procedure.
 - c. Certification that applicant has express authorization to make application.
 - d. Direct examination of witnesses.
 - e. Cross-examination of witnesses by Board members and by the Appellee. Normally, the cross-examination will be conducted by the Appellee or a spokesperson, but any person desiring to question the Applicant's witness must first address the Chairperson, and when recognized, request leave of the Chairperson to ask questions of the witness, and he/she may not proceed until such leave is granted. Upon initial recognition by the Chairperson, the person questioning will give the following information before questioning the witness:
 - i. Name.

- ii. Home address and, if appropriate, its approximate location with reference to the subject property.
 3. Opposition's/Appellee's presentation:
 - a. Direct examination of witnesses.
 - b. Cross-examination of witnesses by Applicant and by any Board members.
 - c. Re-direct examination of witnesses.
 - d. Re-cross examination of witnesses.
 4. Rebuttal by the Applicant/Appellant. The Applicant/Appellant may present evidence to rebut any evidence introduced by the opposition. No new evidence unrelated to opposition's presentation may be introduced at this time.
 5. Introduction of reports and official documents pertaining to the case by the director of the St. Mary's County Department of Land Use and Growth Management or his or her designee.
 6. Public testimony and comment.
 7. Summation by Appellant.
 8. Summation by Applicant/Appellant.
 9. Board of Appeals' action. The Board may grant or deny the application or uphold, reverse or remand a decision on appeal at the end of the presentation, stating its findings of fact and conclusions of law, or it may take the case under advisement for further deliberation and later decision.
- C. Questions shall pertain only to statements made by the witness and shall be interrogatory in nature and not argumentative. The Chairperson may rule on the suitability of a question, and in the discretion of the Chairperson, questions or cross-examination may be reduced to writing and asked by the legal advisor attending the

Board or any other individual designated by the Chairperson. The Chairperson may impose reasonable limitation upon cross-examination, including, but not limited to re-direct examination of Applicant's witness and re-cross examination of Applicant's witness.

- D. The Chairperson may place reasonable limitations upon public testimony, such as three (3) minutes for individuals and five (5) minutes for a person representing a group or organization, provided the record is kept open for a reasonable time in order to allow written testimony to be submitted.
- E. The Board may amend the order of presentation when efficiency of hearing requires it, so long as due process is afforded.
- F. For proper reasons shown, the Board may continue the case to receive additional evidence at a later time if the Board deems it essential in making the proper decision. The Board may not consider any additional evidence after the hearing is concluded; however, the Board may receive legal memoranda summarizing the presentations of the Applicant or opposition upon approval of a request made in open session.
- G. The Board, in its sole and absolute discretion, may accept minor amendments or changes to the application at a public meeting or public hearing. Changes deemed by the Board in its unreviewable discretion to be more than minor amendments, or substantive changes to the application that are

subsequent to notice having been provided for public hearing or publication of the agenda of the Board shall be re-advertised and heard only upon completion of the re-advertisement as due process requires.
- H. The Chairperson may announce, at the beginning of each hearing, a limitation on the amount of time allowed for testimony.

XV. CONDUCT OF ADMINISTRATIVE APPEAL HEARINGS.

- A. The hearing of appeals from the decision of an agency or official shall be de novo.
- B. The conduct of de novo appeal hearings shall be the same as for Board hearings where the Board acts pursuant to its original jurisdiction, as set forth in Section XIV, A and B.

C. Burden of Proof.

1. In administrative appeals from notices of violation of County laws and regulations, including the issuance of a cease and desist order, the burden of proof is one of a preponderance of the evidence and shall rest on the County.
2. In all other de novo appeals, the burden of proof shall be on the Appellant to show that the action taken by the administrative agency was clearly erroneous, illegal, unconstitutional, or arbitrary and capricious.

XVI. DECISION AND ORDER.

- A. The final Order of the Board granting or denying an application or upholding, reversing or remanding a decision or appeal shall be in writing, approved by action of the Board and signed by the Chairperson accompanied by written findings of fact and conclusions of law. The decision and order shall be made a part of the record of proceedings and shall be filed with the Department of Land Use and Growth Management and maintained as part of the official records of St. Mary's County. Each case shall be decided, and the final decision and order shall be issued not later than sixty (60) days from the close of the last public hearing.
- B. Upon receipt of the Board's final decision and order in any case, the Clerk shall cause copies thereof to be made and mailed to: the Applicant; all parties of interest who appeared or testified during the hearing, and who provide their names and addresses; and all other persons who make a request for a copy thereof.

XVII. QUORUM AND VOTE REQUIREMENT.

A majority of the Board shall constitute a quorum. The vote of a majority of the Board members present is required for valid action by the Board. Each member shall have one vote.

XVIII. REVISORY ACTIONS PERMITTED

- A. Revisory Actions. The following revisory actions are permitted, at the discretion of the Board:

1. At the written request of any party made within 15 days of the issuance of the Order and for good cause shown, the Board may, at its discretion, suspend its Order and re-open the case to reconsider, modify, or rehear the issue. The party submitting the written request shall certify in writing that the request has been served upon all other parties to the case. Provided that written notice has been given to all parties, the requesting party may present a brief oral argument at the next regular hearing of the Board. All other parties shall have the right to rebut any statements made by the requesting party.
 2. Without prior notice or hearing, the Board, by resolution, may modify any Order to correct a clerical error. The Board shall send a copy of the corrected Order to each recipient of the original Order. The date of the modified order shall be the official issuance date for appeal purposes.
 3. At any time the Board may revise any Order in the case of fraud, mistake, or irregularity.
 4. The time for the appeal to the Circuit Court, under Rule 7-101 herein, shall be tolled upon receipt of a request for reconsideration, modification, or rehearing. The appeal period shall resume once the Board of Appeals acts on the request for reconsideration unless the Board modifies, suspends or withdraws its Order, in which case a new appeal period shall commence as of the date of issuance of the Board's final Order.
- B. Grounds for Reconsideration, Modification or Rehearing. The following guidelines shall apply to reconsideration, modification or rehearing of a case:
1. The Board shall reconsider or rehear a matter only upon a showing of mistake of fact or law, or to correct a clerical error, or for the other good cause shown.
 2. The Board shall not rehear a matter unless evidence is submitted which could not reasonably have been presented at the original hearing or unless some mistake or misrepresentation was made at the original hearing which requires re-argument in order to be corrected.

3. The party requesting reconsideration, modification, or rehearing shall serve a copy of the request on all parties entitled to receive notice in the case, and certify such service to the Board.
4. Within 15 days of filing of a request for reconsideration, modification, or rehearing, any party may file a written response to the request, to be considered by the Board prior to making its decision.

XIX. APPEAL TO THE COURTS.

All final, written decisions of the Board shall be subject to review by the Circuit Court for St. Mary's County upon an appeal filed pursuant to the Maryland Rules of Procedure by any party with standing recognized by law, within the time prescribed for appeals from administrative agencies by such rules of procedure.

XIX. RULES NOT JURISDICTIONAL.

These Rules of Procedure do not constitute a jurisdictional requirement. Failure of the Board, its staff, or any party to comply with any provisions of these Rules of Procedure shall not invalidate any otherwise valid decision or action of the Board.

On January 23, 2004, these Rules of Procedure of the St. Mary's County Board of Zoning Appeals were unanimously approved and adopted by the members of the Board of Zoning Appeals for St. Mary's County, Maryland, pending approval by the Board of County Commissioners for St. Mary's County, Maryland.

BOARD OF ZONING APPEALS FOR ST. MARY'S COUNTY, MARYLAND

By: _____

Marie Underwood, Chairperson

Approved by the Board of County Commissioners for St. Mary's County, Maryland, this _____ day of _____, 2004.

By: _____

Thomas F. McKay, President