

CHESAPEAKE BEACH BOARD OF APPEALS
RULES OF PROCEDURE
(Adopted April 14, 2015 and Amended October 5, 2022 (in bold))

SECTION 1 – PURPOSE

The purpose of these rules is to establish procedures for the conduct of all matters which come before the Chesapeake Beach Board of Appeals (hereinafter referred to as the “Board”), by law or custom. These Rules of Procedure are in addition to and supplement any requirements of the Zoning Ordinance for the Town of Chesapeake Beach in Calvert County, Maryland (the “Zoning Ordinance”), the Land Use Article of the Annotated Code of Maryland and the State of Maryland Open Meetings Act. The Board, by resolution, may adopt policies to implement these Rules of Procedure.

SECTION 2 – ORGANIZATION

A. Officers

In accordance with Chapter 290 (Zoning), § 290-32 (Board of Appeals), Subsection (C)(1) of the Code of the Town of Chesapeake Beach, the Board shall elect a Chairman from its membership. The election shall occur annually at the first meeting of the Board **every other** calendar year. **The Chairman shall serve a term of two years, or until the Chairman ceases to be a member of the Board, whichever comes first.** The Chairman shall preside at all hearings and meetings of the Board. The Chairman shall decide all points of order, objections and procedure, subject to these rules, unless otherwise directed by a majority of the Board members present. In addition to a Chairman, the Board **simultaneously** shall elect a Vice-Chairman who shall preside over the Board in the Chairman’s absence. The Vice-Chairman shall succeed the Chairman if that office is vacated before the term is completed and shall serve the unexpired term of the vacated office. A new Vice-Chairman shall be elected at the next regularly scheduled meeting **after the Vice-Chairman assumes the office of the Chairman, and at such other time as the office of the chairman is vacated.**

B. Secretary

The Town Clerk for the Town of Chesapeake Beach shall serve as the Secretary to the Board. The Secretary to the Board shall perform official duties assigned by these Rules or the Board. The Secretary shall prepare the agenda which shall be approved by the Chairman. The Secretary is the contact person for all normal communications between Board members, applicants, staff and the public.

SECTION 3 – APPLICATIONS

All applications shall be filed on forms approved by the Board and shall be accompanied by the filing fee established by the Town. Applications must be signed by the applicant and contain all requested information, or in the absence of such information an explanation shall be provided

as to why the information is not provided. Applications failing to comply with this requirement shall be deemed incomplete, will not be accepted for filing and will be returned to the applicant with a statement of the required information that is missing or incomplete.

SECTION 4 - NOTICE

Notice of all hearings of the Board shall be made as prescribed by the Zoning Ordinance. Notification shall follow the procedures outlined in § 290-32(D) of the Town Code.

SECTION 5 – PRELIMINARY ACTION

Upon convening the hearing, a brief explanation of the purpose of the hearing shall be presented by the Chairman, together with any information or data that has been received, before public discussion and comments begin. The case file shall be a part of the record and available to the public at reasonable times.

SECTION 6 – QUORUM

A majority of the voting members of the Board shall constitute a quorum for voting purposes.

SECTION 7 – OPEN MEETINGS

All hearings and meetings of the Board shall be open to the public in accordance with the Maryland Open Meetings Act (Md. Code Ann., Gen. Prov. § 3-101, et seq.), as the same is amended from time to time. The Board may meet in closed session as authorized by the Maryland Open Meetings Act.

SECTION 8 – FILING AND SERVICE

Applications, notices, statements, exhibits, and other papers (collectively referred to as “documents”) filed with the Board shall be filed with the Secretary to the Board. The Applicant shall provide the number of copies required by the Board. Copies of all exhibits offered or accepted into evidence at any hearing shall be provided to and served upon all other parties. The original of all exhibits shall be given to the Secretary, with a copy to each Board member and the Board’s counsel. In addition one copy of each exhibit shall be served upon each party of record.

SECTION 9 – RECORD OF PROCEEDINGS

It shall be the duty of the Secretary to keep a true and accurate record of all proceedings at all public hearings and meetings. Hearings and meetings shall be electronically recorded. A tape recording may be accepted as the official record. Recordings shall not be transcribed except at the request and expense of the person making the request. A request for a transcript must be in writing, addressed to the Secretary to the Board and be accompanied by a sufficient deposit as determined by the Town.

SECTION 10 – INFORMATION FROM THE PUBLIC

A. The Chairman may prescribe procedures for registration of speakers and may require that each person come forth and state the following information:

- (1) name;
- (2) address; and
- (3) person or individual he/she represents, or that he/she is speaking as an individual.

The Chairman may announce reasonable registration requirements for speakers so that all may have an opportunity to be heard. The Chairman shall provide for the orderly conduct of hearings and may request the assistance of appropriate authorities to maintain order.

The Chairman or Board’s Counsel shall swear staff, the applicant, and all witnesses who intend to testify on any application at the beginning of the scheduled agenda item. The following oath shall be administered: **Do you solemnly swear or affirm under the penalties of perjury that the testimony you are about to give and the responses and statements you are about to make will be the whole truth and nothing but the truth.** Any individual wishing to become a person of record (party of record) must indicate this by signing up to speak at the hearing or otherwise noting their intention, in writing, to become a person of record. The applicant and his/her correspondent shall automatically be considered parties of record.

B. The following guidelines shall be observed for citizen participation:

Guidelines for Citizen Participation

- (1) All statements or questions must be addressed to the Chairman.
- (2) Speakers will generally be called in the order appearing on the sign-up sheet.
- (3) Members of the Board may address questions to each speaker.
- (4) Persons whose names do not appear on the sign-up sheet when a Public Hearing on an item commences may be permitted to add their names during the course of the public hearing at the discretion of the Chairman.
- (5) Speakers and members of the audience shall maintain proper decorum. The Chairman may request disruptive individuals to leave the hearing or meeting, and may have any disruptive individual who continues to interfere with the proceedings removed.

SECTION 11 – CROSS-EXAMINATION

The Chairman shall permit any party of record to ask questions of a witness at the conclusion of that witness’ testimony. Questions should be limited to information presented by the witness. In other words, it is not appropriate for a person to begin his/her own testimony at this time, nor to question a witness on a subject not presented into the record by that witness. The Chairman may also limit the number of questions to a single representative of each side.

SECTION 12 – CONTINUANCES

A hearing that has been properly convened may be continued by the Board without re-advertisement if the Board announces at or before adjournment of the original hearing the date, time and place at which the hearing is scheduled to resume.

SECTION 13 – RESCHEDULED OR CANCELLED MEETING (Amended April 10, 2018)

A. The Chairman, in consultation with other available members of the Board, may cancel or reschedule a meeting of the Board due to inclement weather, lack of business of the Board, lack of a quorum of the Board, or convenience of the Board or Town staff.

B. An applicant or other party to a matter may request the Board to postpone or reschedule a scheduled hearing for good cause. The Chairman, in consultation with other available members of the Board, shall rule on a request for postponement or rescheduling by an applicant or other party. If a request for postponement or rescheduling is granted, the party requesting the postponement or rescheduling shall be responsible for paying all costs of readvertising notice of the hearing and all other costs incurred by the Town as a result of the postponement or rescheduling.

C. Should a scheduled meeting of the Board be cancelled or rescheduled for any reason, the Secretary shall post a notice of the cancellation/rescheduling on the Town website and the door to Town Hall. If the cancellation/rescheduling occurs less than five (5) business days prior to the date of the scheduled meeting, in addition to posting the required notices, the Secretary shall either call or send an e-mail to all applicants whose applications were scheduled for hearing at such cancelled/rescheduled meeting and their authorized agents, using the information provided on their application. If the cancellation/rescheduling occurs five (5) business days or more prior to the date of the meeting, the Secretary shall provide written notice thereof to the applicant and the applicant's authorized representative. If the Town is aware that any person is interested in an application affected by the cancellation/rescheduling, the Secretary shall provide notice to such person in the same manner as for the applicant, provided that the Secretary has the person's contact information.

SECTION 14 – EVIDENCE

- A. The Board is not bound by formal legal rules of evidence.
- B. Hearsay evidence, if relevant, will normally be accepted into the record, and the Board shall determine the degree of credibility to which such evidence is entitled.
- C. The Board may exclude immaterial or unduly repetitious testimony, or evidence,

and may limit the number of witnesses when testimony is cumulative in nature.

D. Objections to testimony will only be sustained for the most compelling reasons (including undue prejudice) so that the purpose of providing wide latitude to witnesses will be served.

E. Objections to testimony must be made at the time the information is presented or they will be considered waived.

F. Each item entered shall be marked as evidence by the Secretary.

SECTION 15 – CLOSING THE HEARING; DELIBERATIONS; VOTING; AND CLOSING THE RECORD (Amended April 10, 2018)

At the end of a public hearing, the Chairman shall close the public hearing and begin the Board's deliberations regarding the matter before it, except that the Chairman may defer deliberations to a future meeting. When a motion is made and properly seconded after deliberations begin, the Chairman shall call for discussion on the motion. Upon completing the discussions, the Chairman shall call for a vote on the motion. A voice vote of the Chairman is generally not required and, unless otherwise stated, the Chairman's vote on a motion shall be automatically recorded with the majority.

However, the Board may leave the record open at the conclusion of the hearing to receive additional evidence and may, in its discretion, limit the evidence to a specific matter or issue. Any time limits for holding the record open shall be stated by the Chairman at the hearing. If a hearing is continued or recessed for any reason, additional information may be received.

SECTION 16 – EX PARTE COMMUNICATION

A. No member of the Board may communicate ex parte, or outside of the record, with any person regarding the merits of a pending case. The members may, however, communicate with each other, staff, or with legal counsel, to the extent permitted by the Maryland Open Meetings Act and provided that such communications do not involve the receipt or consideration of evidence not in the record .

B. Any member of the Board who receives an ex parte communication in violation of subsection (A) shall place on the record all written communications received, a memorandum stating the substance of all oral communications received and responses made, and shall arrange notification to all parties of record that such communication has been filed. Any party desiring to rebut the ex parte communication shall be allowed to do so upon request made within five (5) days after notice of the communication. Any Board member may, if he/she deems it necessary to eliminate the effect of a prohibited ex parte communication, withdraw from the proceeding.

SECTION 17 – PRESENTATIONS (Amended April 10, 2018)

A. Except as otherwise stated in the guidelines shown in ATTACHMENT A, the

following shall be the Order of Presentation for public hearing items coming before the Board:

- (1) Presentation by Town Staff
- (2) Presentation by Applicant
- (3) Presentation by Others
- (4) Rebuttal by Applicant
- (5) Surrebuttal and summation by Opposition (if any)
- (6) Summation by Staff
- (7) Summation by Applicant

B. For variance and special exception cases, Staff presentations shall generally follow the guidelines shown in ATTACHMENT B.

C. In the event an applicant does not appear at the Board's hearing, the applicant's application shall be deemed withdrawn.

SECTION 18 – RULES OF ORDER

The rules of parliamentary practice and procedure as set forth in the latest published edition of Robert's Rules of Order shall govern the Board in all cases not otherwise provided for in these Rules of Procedure or the Zoning Ordinance. The conduct of meetings shall conform to these Rules of Procedure and the Charter and Ordinances of the Town.

SECTION 19 – DECISIONS AND RESOLUTIONS (Amended April 10, 2018)

A. For Variances:

(1) Form – All final decisions shall be reflected in the form of a resolution, which contains a decision regarding which a majority of the Board members voting concur.

(2) Contents – The resolution reflecting the final decision of the Board shall contain separate statements of Findings of Fact and Conclusions of Law.

(3) Time for Filing – The resolution reflecting the Board's decision shall be completed and sent to all parties of record as soon as practicable, but in no event more than one (1) business day after it is signed by the Board. A copy of each resolution shall be sent to the Town Council, Planning Commission and Zoning Administrator within five (5) business days after the date of the Resolution. The Board shall adopt the resolution reflecting the Board's decision within the time specified in Section 290-32.L. of the Town Code, currently 120 days.

B. For Advisory Matters:

(1) Form – All decisions shall be reflected in a written report to the Town Council.

(2) Contents – The contents of the Board's report to Town Council shall include the major points or questions highlighted by the Board during the review of the application, a summary

of comments presented by citizens and the Board's motion.

(3) Time for Filing – The report shall be filed with Town Council by Thursday of the week preceding a Town Council hearing.

C. Minority Opinions:

Concurrently with the approval of a decision by the Board, a member of the Board who disagrees with the decision may submit a written minority opinion or report that shall be attached to the Board's resolution or report. The minority opinion shall be signed by the member who submitted the minority opinion or report and by any other member who joins in the minority opinion or report.

SECTION 20 – MINUTES

The Board shall have written minutes prepared to reflect each item that the Board considered, the action that the Board took on each item, and each vote that was recorded. If a member is absent or fails to vote, such fact should be recorded as well. Minutes shall be kept by the Secretary and shall also identify the date, time and place of the meeting and contain a record of attendance. Minutes shall be prepared as soon as practicable, but in all cases prior to the next scheduled hearing at which the minutes shall be placed on the Board's agenda for approval. Once approved, the minutes shall be placed in a record book for filing and shall be considered a matter of public record and shall be made available for inspection during regular business hours.

If the Board meets in closed session, the minutes for its next open session shall include (i) a statement of the time, place and purpose of the closed session; (ii) a record of the vote of each member as to closing the session; (iii) a citation of the authority under the Maryland Open Meetings Act for closing the session; and (iv) a listing of the topics of discussion, persons present, and each action taken during the session. Any minutes and any tape recording of a closed session shall be sealed and may not be open to public inspection, except as provided for in State law.

SECTION 21 – COMMUNICATIONS

The Board shall not consider any ex parte or private communication from any person or organization, whether oral or written, which may relate to the merits of any administrative appeal, special exception or variance pending before the Board. Any such communication must be noted in the record of the case and the parties shall be given an opportunity to comment thereon.

Nothing contained herein shall preclude the Board from obtaining any evidence, counsel or assistance from Town staff provided the staff or their department is not a party to or directly involved in a pending matter for which the advice, counsel or assistance is sought.

SECTION 22 – RECORDING OF PUBLIC HEARINGS AND MEETINGS

Persons desiring to videotape, televise, photograph, broadcast, or record a hearing or

meeting of the Board shall submit a written request to the Secretary to the Board at least five (5) days prior to the date of the hearing or meeting. Any such activity may be permitted only with the prior written consent of the Board and all parties to the proceeding.

SECTION 23 – APPEALS

Any person who participated in the hearing who is aggrieved by a Board decision may file an appeal to the Circuit Court for Calvert County within thirty (30) days of the date of the Board's written decision in accordance with the Maryland Rules.

SECTION 24 – CONFLICT

In the event that any of the provisions of these Rules of Procedure contradict or conflict with any provision of the Zoning Ordinance, said provisions shall be of no force and effect and the provisions of the Zoning Ordinance shall govern.

SECTION 25 – SITE VISITS (Added April 10, 2018)

A. A Board member may not visit a site that is the subject of a pending application except during a site visit conducted by the Board in accordance with this Section.

B. Upon request of any party or upon the Board's own motion, and prior to the close of the record in the case, the Board may visit the site which is the subject of the application. Parties, their representatives and members of the public may be present to observe, but no testimony may be taken. The parties, their representatives or members of the public may not engage in any discussion with Board members at the site visit. Board members may not engage in any discussion among themselves or with the parties or their representatives or members of the public at the site visit. A Board member who has not participated in the site visit prior to the Board's vote on the application may not participate in the decision.

C. If a determination to conduct a site visit is made during a hearing, after consultation with the parties, Town staff and other Board members, the Chairman shall announce the date, time and location of the site visit, and that no communications are to take place during the site visit. If the determination to conduct a site visit is made at some time other than during a hearing the Secretary shall give notice, at least five (5) days before the site visit, to the parties and to members of the public in the same manner as notice is given for meetings of the Board.

D. Following the conclusion of the site visit the Board shall submit for the record, and provide to all parties and members of the public who attended the site visit by e-mail or by first class mail, a written statement that includes at least the following about the site visit:

- (1) The case number;
- (2) The date, time and location of the site visit;
- (3) The persons who attended the site visit;

- (4) The weather during the site visit; and
- (5) Any comments the Board chooses to make about its observations during the site visit.

E. The distribution of the written statement shall include the following statement: “Within five (5) days from the date of this notice you may request, in writing, the Board of Appeals to conduct or continue the hearing on the application for the purpose of affording the applicant and other parties the opportunity to question the Board about its written statement. If a request for the board to conduct a hearing regarding the written statement is not received by the Board within five (5) days from the date of the notice, the right to request a hearing is waived.”

F. The Board may rely in its decision upon any observations that it made during the site visit as reflected in its written statement. If the Board does rely on observations from a site visit, this reliance shall be included in the Board’s resolution.

SECTION 26 – EXPIRED APPROVALS (Added April 10, 2018)

Where the Board’s approval of a special exception, variance or interpretation expires in accordance with Section 290-32.H. of the Zoning Ordinance and a new application is filed for the same relief previously granted by the Board, the Board may modify these rules to minimize or eliminate repetition of evidence from the prior proceeding if, after inquiry and consultation with the Planning and Zoning Administrator, the Board determines all of the following:

- A. The applicant is the same person to whom the Board previously granted relief;
- B. The new application and proposed plans are the same in all respects to the application and plans previously approved by the Board;
- C. Since the prior approval there have been no material changes to the property affected, adjoining properties, the neighborhood, traffic, the availability of public services and facilities, or applicable zoning and other land use regulations;
- D. No member of the public opposes the new application in person at the public hearing or in writing at or prior to the public hearing; and
- E. The modification is not contrary to the Zoning Ordinance.

**ATTACHMENT A
(Amended April 10, 2018)**

Order of Presentation

Variances and Special Exceptions

1. Introduction by the Chair
2. Incorporation of the file and record provided by staff into the record
3. Presentation by Petitioner, agent or attorney
4. Testimony of Staff and agencies related to the case
5. Testimony of Proponents
6. Testimony of Opponents
7. Cross-Examination
8. Summary Statements
9. Closing of the Public Hearing
10. Deliberations

Appeals of a decision of a Town Official

1. Introduction of the Appeal by the Chair
2. Appellant testimony and evidence, including witnesses called by the appellant
3. Town staff testimony and evidence, and incorporation of the file and record provided by the staff into the record.
4. Testimony and Evidence by the person or entity whose rights are impacted by the Appeal
5. Summary Statements
6. Closing of the Public Hearing
7. Deliberations

At any time Board members may address questions to staff, applicant, appellant, witnesses or any others present at the hearing as is deemed appropriate. With permission of the Chairman, Board's Counsel may address questions to staff, applicant, appellant, witnesses or any others present at the hearing as is deemed appropriate. Board's Counsel also may provide advice and guidance to the Board as the Board and counsel deem appropriate.

ATTACHMENT B

Guidelines for Staff Presentations

1. Enter the case file into the record.
2. State dates and form of public notice for the record.
3. Certifications – Published Legal Notice
 - Certified Mail Notices
 - Mailing List (how many residents were notified)
 - Sign Posting (if required)
4. Give orientation to site and surrounding zoning.
5. Review Location/Premise Address Map.
6. Present Staff Photos.
7. Review Zoning Map.
8. Review Tax Map.
9. Review Record Plat.
10. Review Aerial Photo.
11. Review Master Plan Map (if applicable).
12. State criteria for approval.
13. Review applications conformance with criteria for approval.
14. Recommendation, including explanation of any conditions.