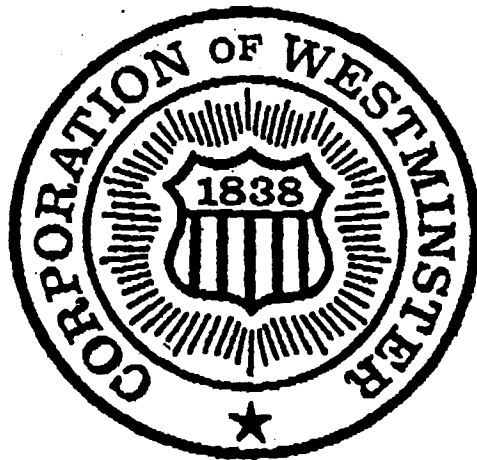


**RULES OF ORDER AND PROCEDURE
FOR THE
BOARD OF ZONING APPEALS
OF WESTMINSTER**



Board of Zoning Appeals

**Ed Cramer, Board Member
Venzena Legge, Board Member
Gary Beard, Chairman**

**City Attorney
John B. Walsh, Jr.**

Effective: November 10, 2009

RULES OF THE BOARD OF ZONING APPEALS
OF THE CITY OF WESTMINSTER

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Section 1. Introduction.

These Rules have been adopted to assist the Board in discharging its responsibilities under the Zoning Ordinance which is contained in Chapter 164 of the City Code, including administrative appeals, petitions for special exceptions, and variances. They are supplementary in nature.

All applicants, petitioners and interested parties should consult the Zoning Ordinance for additional important substantive and procedural requirements and should consult the office of the Board of Appeals for further information. (City of Westminster, 56 West Main Street, Westminster, Maryland, 21157; telephone no. 410-848-9000).

Section 2. Applications for administrative appeals.

An appeal from an administrative decision must be filed within thirty (30) days after the day of the decision. Unless otherwise restricted, administrative appeals to the Board shall be heard on the merits, de novo.

Section 3. Meetings and hearings.

- (a) Meetings shall be held at such times and places as the Board shall designate.
- (b) Hearings shall be held at such times and places as the Board shall designate in accordance with Section 164-166 of the Zoning Ordinance.
- (c) The Board may inquire fully into the facts and the law with regard to each issue presented. To this end the Board may exercise its powers to ensure that all necessary and pertinent information is made available. The Board may:
 - (1) Hold conferences to clarify issues and to expedite full and fair handling of the case.
 - (2) Upon motion of any party or upon its own motion, dispose of procedural requests, including motions to amend, to consolidate applicants or petitions, to re-open the record, of any case in order to receive additional evidence or information.
 - (3) Regulate the course of public meetings and hearings.
 - (4) Rule upon proffers of proof and receive relevant evidence.

- (5) Subpoena, swear and examine witnesses.
- (6) Introduce into the record, on its own motion, documentary or other evidence, provided that all parties are notified and given reasonable opportunity to reply or to be heard thereon.
- (7) Require the parties to state respective positions concerning any issue.
- (8) Require any applicant, appellant, or petitioner to provide additional information concerning his petition or appeal.
- (9) Take such other action as is necessary to carry out the intent of the Zoning Ordinance.

Section 4. Quorum.

Two (2) members of the Board shall constitute a quorum for hearing and deciding all matters.

Section 5. Preliminary matters.

At the opening of a public meeting or hearing, the Board shall provide opportunity for disposition of brief preliminary matters.

Section 6. Executive sessions.

Executive sessions of the Board shall be held as often as necessary, at the call of the chairman, or upon petition to the chairman by at least two (2) members of the Board.

Section 7. Presiding officer.

The chairman shall preside at all hearings, meetings and executive sessions of the Board. In the absence or disability of the chairman, an acting chairman shall be designated by the Board to preside at the particular meeting or hearing.

Section 8. Prehearing requirements.

The following prehearing requirements shall apply to all petitions for special exception, variances, and administrative appeals:

(1) The applicant or petitioner must file an original prehearing statement with the Board of Appeals with four (4) copies no later than fifteen (15) days prior to the date set for the hearing, with copies to all parties of record. The statement must include the following information:

- (a) a statement of the grounds upon which the application is based;
- (b) copies of all reports, studies and other documents and plans intended to be introduced at the hearing;
- (c) a summary of expert testimony and credentials which will be proffered at the hearing;
- (d) identity of all witnesses who will testify; and
- (e) estimated time required for presentation.

(2) Persons or entities intending to appear in opposition to an application or petition, must file a similar prehearing statement no later than seven (7) days prior to the date of the hearing. Nothing in this section should be construed to limited the rights of individual members of the public to submit testimony during the hearing or to submit pertinent written materials at any time while the record remains open.

(3) The information submitted in compliance with Subsections 8 (1) and (2) above shall be construed as an intent only to submit such information or to provide testimony from witnesses, but neither the applicant or petitioner nor the opposition are bound to introduce the same at the hearing.

(4) Failure by a party to comply with Subsections 8 (1) and/or (2) may be cause for refusal to accept the pre-hearing statement and/or cause for postponement, continuation of the hearing, and/or decisions to leave the record open for a specified time to permit rebuttal evidence. Advertisements or transcript costs of a continued or postponed hearing must be paid by the party who failed to comply with the pre-hearing statement requirement and must be paid to the City prior to the issuance of the written decision of the Board of Appeals. In addition, the Board is empowered to dismiss an administrative appeal, petition for special exception, variance application, or deny the introduction into the record any report, study or plans or prohibit the testimony of a party's witness who is not identified due to the failure of a party to comply with Subsections 8 (1) and/or (2).

Section 9. Preliminary motions.

Any party may file a motion as to a matter that may or should be considered by the Board prior to a hearing, and any other party or participant to the proceeding may file a response to such a motion in the time provided by the Board. Thereafter, the Board may dispose of the motion with or without a hearing.

Section 10. Order of evidence.

Evidence at public hearings shall be presented in the following order, unless the parties by mutual agreement stipulate otherwise, or unless the Board rules otherwise:

- (1) Government officials and agency representatives.
- (2) Appellant or petitioners.
- (3) Other supporting testimony.
- (4) Organizations or groups opposing appeals or petitions. Organizations or groups are encouraged to designate a single person to speak on their behalf.
- (5) Individuals opposing the appeal or petition.
- (6) Other persons seeking to testify.
- (7) Rebuttal testimony.
- (8) Surrebuttal testimony.

The Board reserves the right to question witnesses. At the conclusion of the testimony of each witness, opposing parties may cross-examine each witness. Cross examination shall be limited to the information presented by the witness. The Board's Chairman may limit the number of questions to one or more representatives of each side.

Section 11. Rules of evidence.

The rules of evidence applicable in the courts of Maryland shall apply. These rules may be relaxed by the Board in accordance with customary rules of evidence in administrative hearings, as in its judgment the ends of justice may require. The Board may require witnesses to testify under oath. The Board shall give effect to the rules of privilege recognized by the laws of Maryland, and the Board may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Any evidence that the Board does not admit shall be so identified.

Section 12. Who may appear.

Any person or organization having an interest in a particular case may appear in person or through an attorney and may present witnesses in his or its behalf. This paragraph shall be liberally construed in order to develop a complete and orderly public record.

Section 13. Representation by counsel.

All parties, including corporations, but excepting individuals appearing on their own behalf, shall be represented by attorneys at law, who are duly admitted and enrolled to practice before the Court of Appeals of Maryland during the course of special exception, variance and appeal proceedings.

Section 14. Applicant's burden of proof.

The applicant for a special exception or variance shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.

Section 15. Exhibits of record.

All evidence and exhibits presented to the Board shall be duly numbered, made a part of the case record and included in the case file. In order to facilitate the compilation of a complete file, the Board may require photographs or reductions to be substituted in lieu of physical or bulky exhibits.

Section 16. Service.

Any party filing motions, oppositions thereto, legal memoranda and/or procedural requests shall serve copies on all parties entitled to original notice in the case and shall certify in writing the date and manner of such service. The Board may direct that other interested parties be notified of such service.

Section 17. Decisions.

The Board shall render its decisions in accordance with Section 164-172 of the Zoning Ordinance.

Section 18. Reconsideration, modification, and/or rehearing.

(a) Procedure for reopening a case. At the written request of any party made within fifteen (15) days of the date of the Board's decision and specifying the reasons for the request and the nature of the relief desired, or on the Board's own initiative, the Board may

within thirty (30) days of the date of its decision suspend it and re-open the case for the purpose of reconsideration, modification, and/or rehearing.

(b) For the purpose of correcting a clerical error the Board may, at any time, without prior notice or hearing, modify its decision without suspending it, and in such case shall send a copy of the corrected decision to each recipient of the original decision.

(c) The time for appeal to the circuit court is not affected by a request for reconsideration, modification, or rehearing unless the Board, by the required vote, modifies, suspends, or withdraws its resolution.

(d) Grounds for reconsideration, modification, or rehearing:

(1) Reconsideration or modification shall be granted only upon showing of mistake of fact or law, or to correct clerical error.

(2) Request for modification of a condition may be granted at the discretion of the Board for good cause shown.

(3) No request for rehearing shall be granted unless evidence of changed circumstances or new 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 rehearing and re-argument in order to be corrected.

(e) Service, response, and notice.

(1) Any request for reconsideration, modification, or rehearing shall be served by the party requesting such reconsideration, modification, or rehearing on all parties entitled to original notice in the case. The Board may, in addition, notify such other parties as it deems appropriate.

Such notice shall state clearly the nature of the proposed modification, and shall be issued at least ten (10) days prior to the date that the Board is to act on the request.

(2) Any party may, within seven (7) days of the date of filing of such request for reconsideration, modification or rehearing, file a written response to such request or ask for oral argument on the request.

(f) Oral argument or rehearing.

(1) A public hearing shall not be required prior to Board action on a request for reconsideration or modification. If, however, the Board should determine to hear oral argument on a request for reconsideration or modification, the Board shall give at least seven (7) days' notice to all parties entitled to original notice in the case, and to any other parties the Board might wish to notify.

(2) Should the Board order a re-hearing of the case, the Board shall give at least fifteen (15) days' notice to all parties entitled to original notice in the case, and to any other parties the Board might wish to notify. Quorum requirements shall be the same for a re-hearing as for the initial hearing in the case.

(g) Decisions and resolutions. The number of members required to approve any reconsideration or modification shall be the same as the number of members required to approve the original petition or appeal. The Board's decision shall be by written decision which shall be published and sent to all parties entitled to receipt of the original decision in the case.

Section 19. Limitations.

The Board shall not give advice, or answer moot questions, or decide declaratory judgments.

Section 20. Modifications to special exceptions.

A request for modification of the terms or conditions of a special exception must be in writing, and may be made at any time. Modifications of special exceptions may be granted with or without public hearing as determined by the Board. All parties who receive a copy of the original decision must receive notice of the Board's action modifying the original grant. The notice must state that any party may, within 15 days of the Board's decision, request a public hearing on the Board's action. Thereafter, the Board will determine whether to grant such request. No public hearing shall be required unless the proposed modification will substantially change the nature, character or intensity of the use or materially impact the neighborhood in which the use is located.

Section 21. Transfers of special exceptions.

Upon the request of the holder of a special exception or the owner of the property for which the special exception was granted, the Board may approve the transfer of a special exception. No public hearing shall be required unless the proposed transfer will substantially

change the nature, character or intensity of the use or materially impact the neighborhood in which the use is located.

Section 22. Appeals.

Any appeal from decisions of the Board shall be taken in accordance with Section 164-175 of the Zoning Ordinance, Section 21 of the City's Charter, and Chapter 200 of Title 7 of the Maryland Rules of Procedure. The Appellant shall pay the entire cost of the transcription of the Board's record and that expense shall be taxed as costs.

Section 23. Amendment of rules.

These rules may be amended from time to time by a majority vote of the Board.

Adopted this 10th day of November, 2009.

Board of Zoning Appeals

By: *Gary Beard*
Gary Beard, Chair

ATTESTED TO:

T B Beard
Thomas B. Beard, Secretary