

County Council of Howard County, Maryland

2023 Legislative Session

Legislative day # 3

RESOLUTION NO. 49 - 2023

Introduced by: Liz Walsh at the request of the Zoning Board

A. RESOLUTION approving Rules of Procedure of the Hearing Examiner that set out the procedures by which hearings will be conducted by a Hearing Examiner.

Introduced and read first time on _____, 2023.

By order _____
Michelle Harrod, Administrator to the County Council

Read for a second time and a public hearing held on _____, 2023.

By order _____
Michelle Harrod, Administrator to the County Council

This Resolution was read the third time and was Adopted ____, Adopted with amendments ____, Failed ____, Withdrawn ____ by the County Council on _____, 2023.

Certified by _____
Michelle Harrod, Administrator to the County Council

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law. ~~Strike out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, Section 16.203A of the Howard County Code authorizes the Hearing
2 Examiner to hold evidentiary hearings on behalf of the Howard County Zoning Board and Sections
3 16.302 and 16.303 of the Howard County Code authorize the Hearing Examiner to hold hearings
4 on behalf of the Board of Appeals; and

5
6 **WHEREAS**, County Code Section 16.203A(a)(3) requires the Zoning Board to adopt
7 Rules of Procedure for the Hearing Examiner in Zoning Board cases; and

8
9 **WHEREAS**, County Code Section 16.303(f) requires the Hearing Examiner to adopt rules
10 of procedure; and

11
12 **WHEREAS**, County Code Section 16.303(f) provides that the Hearing Examiner’s rules
13 of procedure become effective upon approval by Resolution of the County Council;

14
15 **WHEREAS**, the Rules of Procedure will be subject to approval by the Zoning Board on
16 March 15, 2023, and the attached version of the Rules of Procedure are a draft version that will
17 be replaced once the Zoning Board approves the final version;

18
19 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
20 Maryland this _____ day of _____, 2023, that the County Council approves the Rules
21 of Procedure of the Hearing Examiner that are attached to this Resolution.

22

RULES OF PROCEDURE
of the
BOARD OF APPEALS HEARING EXAMINER

~~Article 1~~ ~~Article I-~~
~~Authority and, Purpose and Staff~~

1.1. Authority.

(a) These Rules of Procedure are adopted pursuant to ~~§~~:

i. Section 16.203A of the Howard County Code, which authorizes the Hearing Examiner to hold evidentiary hearings on behalf of the Howard County Zoning Board, and

~~1.1.~~ii. Sections 16.302 and 16.303 of the Howard County Code, which authorize the Hearing Examiner to hold hearings on behalf of the Board of Appeals.

Procedure

(b) The conduct of hearings by a Hearing Examiner under Section 16.203A shall be in accordance with the Rules of Procedure of the Howard County Zoning Board, Sections 2.402, 2.403 and 2.405, which rules shall be and hereby are incorporated herein.

(c) The conduct of hearings by a Hearing Examiner under Sections 16.302 and 16.303 which authorize the Hearing Examiner to hold hearings on behalf of the Board of Appeals shall be in accordance with these Rules of Procedure.

~~1.5.1.2.~~ Purpose. The purpose of these ~~rules~~Rules is to set out the procedures by which hearings will be conducted by a ~~Board of Appeals~~ Hearing Examiner.

~~1.6.1.3.~~ Definitions. As used in these rules, the following terms have the meanings indicated:

~~(b)~~(a) “Administrative ~~assistant~~Assistant” means the administrative assistant to the Board of Appeals as defined in §2.201(f) of the ~~Board’s~~ Board of Appeals Rules.

(b) “Board Applicant” means ~~the~~ any petitioner, appellant or mover of an application or petition.

(c) “Application” and “petition” mean any application, appeal or petition.

~~(b)~~(d) “Board of Appeals Administrator” means the person whom, on behalf of the Zoning Board and Board of Appeals, handles administration of Zoning Board and Board of Appeals cases. If there is not a person designated as a “Clerk” or “Administrative Assistant,” the Board Administrator shall perform such duties.

~~(e)~~(c) “~~Board’s~~Board of Appeals Rules” means the Rules of Procedure for the Howard County Board of Appeals as set forth in ~~subtitle~~Subtitle 2 of Title 2 of the Howard County Code.

~~(d)~~(f) “Clerk” means the clerk of the Board of Appeals as defined in §2.201(d) of the Board’s Rules.
~~Board’s Rules.~~

~~(f)~~ “DPZ” means the Department of Planning and Zoning for Howard County,
(g) Maryland.

~~(f)~~(h) “Hearing ~~examiner~~Examiner” means a ~~hearing examiner~~Hearing Examiner appointed by the County Council and authorized to hear cases in accordance with §16.~~203A, §16.302 et seq.~~and § 16.303 of the Howard County Code.

Article II – Staff

~~2.1.1.4. Clerk.~~Board Administrator. The ~~clerk~~Board Administrator will serve as the custodian of the records of proceedings of the ~~hearing examiner~~Hearing Examiner and will accept ~~petitions~~applications, motions and correspondence to the ~~hearing examiner,~~Hearing Examiner and will maintain the docket in each case.

~~2.2.1.5. Administrative Assistant.~~ The ~~administrative assistant~~Administrative Assistant will perform administrative duties as assigned by the ~~hearing examiner~~Hearing Examiner.

Article III – Petitions

1.6. Legal Advisor. For hearings held by the Hearing Examiner, the County Solicitor shall be generally available to offer advice to the Hearing Examiner on cases being heard by the Hearing Examiner but shall not be required to attend the Hearing Examiner hearings.

Article 2

Board of Appeals Applications, Notice and Scheduling Hearings

~~3.1. Filing of Petitions.~~Petitions~~Board of Appeals Applications.~~ Board of Appeals Applications must be filed with the ~~clerk~~Clerk in the manner prescribed in 2.1. §2.202(a) of the ~~Board’s~~Board of Appeals Rules.

~~3.2.2.2. Payment of Fees.~~ At the time the ~~petition~~application, appeal or application is filed with the ~~clerk~~Clerk, the ~~petitioner~~applicant must pay the filing and/or hearing fees in accordance with the current schedule of fees adopted by resolution of the County Council. Checks must be made payable to the Director of Finance of Howard County.

~~3.3.2.3. Dismissal.~~ The ~~hearing examiner~~Hearing Examiner will dismiss a ~~petitionan~~ application if the ~~hearing examiner~~Hearing Examiner lacks jurisdiction to hear the ~~petition~~application.

Article IV – Public Notice to the Public

~~4.1.2.4. Public Notice.~~ The ~~petitioner~~applicant, at the ~~petitioner's~~applicant's expense, must provide public notice of the date, time and place of a hearing in accordance with the requirements of §2.203 of the ~~Board's~~Board of Appeals Rules.

~~4.2.(a) Responsibility for Assuring Compliance.~~ The ~~petitioner~~applicant is responsible for assuring compliance with the public notice requirements of §2.203 of the Board's Rules. If any question arises regarding compliance with the public notice requirements, the burden is on the ~~petitioner~~applicant to prove compliance.

~~4.3.(b) Substantial Compliance.~~ If the ~~petitioner~~applicant has failed to comply with the public notice requirements, the ~~hearing examiner~~Hearing Examiner may nonetheless proceed with the hearing if the ~~hearing examiner~~Hearing Examiner determines that:

~~(a)(i)~~ the ~~petitioner~~applicant has made a good faith effort to comply with the public notice requirements; and

~~(b)(ii)~~ the ~~petitioner~~applicant has substantially complied with the public notice requirements.

~~4.4.2.5. Good Faith Effort.~~ If the ~~petitioner~~applicant has failed to substantially comply with the public notice requirements, but has made a good faith effort to comply, the ~~hearing examiner~~Hearing Examiner will give the ~~petitioner~~applicant a reasonable opportunity to correct the non-compliance.

~~4.5.2.6. Failure to Comply.~~ If the ~~hearing examiner~~Hearing Examiner determines that the ~~petitioner~~applicant has not made a good faith effort to comply with the public notice requirements, the ~~hearing examiner~~Hearing Examiner will dismiss the ~~petition~~application.

~~2.7.~~ **Article V – Schedule of Hearings.**

~~5.1.(a) By Hearing Examiner.~~ The ~~hearing examiner~~Hearing Examiner will ~~set the~~ schedule of all hearings, including preliminary hearings and continuations, as the ~~hearing examiner~~Hearing Examiner deems appropriate.

~~5.2.(b) Board Administrator; Notice of Hearings.~~ ~~In addition to the public. The Board Administrator will post notice requirements of Rule 4.1, notice the hearing on the Hearing Examiner website and, as appropriate, on the Board of a hearing will be~~

~~posted~~Appeals website and at the ~~Board's~~Board of Appeals office in the George Howard Building ~~one day~~ten days prior to the hearing.

5.3.2.8. Postponements. A request for a postponement of a hearing should be received by the ~~clerk~~Board Administrator in writing before the scheduled date of the hearing. A postponement will be granted only for compelling circumstances. If a postponement is granted, the ~~party~~person requesting the postponement must provide public notice of the new hearing date and time in accordance with the requirements of §2.203 of the Board's Rules.

5.4.2.9. Continuances. ~~The Hearing Examiner may continue or recess a case. A case may be continued for good cause after it has been advertised for hearing. After a hearing has begun, a case may be recessed for the receipt of additional evidence and upon such conditions or limitations or subject to such additional requirements or hearings as due process may require.~~ If a case has not been concluded at the initial hearing, before continuing the hearing the ~~hearing examiner~~Hearing Examiner will announce the day and time that the case will be continued. If no new hearing date is set at the time of the continuance, the ~~clerk~~Board Administrator will send written notice of the new date and time to all ~~parties~~persons of record at least 10 days prior to the new hearing date. It will not be necessary for the ~~petitioner~~applicant to comply with the public notice requirements of §2.203 of the Board of Appeals' Rules for a continued case.
~~§2.203 of the Board's Rules for a continued case.~~

Article VI – Parties

Parties

Article 3 Persons of Record

6.1.3.1. Persons of record - In General. Except for administrative appeals described in Rule ~~6.3.2~~, any individual or any other legal entity may become a person of record and a party to a proceeding before the ~~hearing examiner~~Hearing Examiner by:

(a) Providing the name, address and signature of the individual or entity and the legal entity's duly authorized representative on a sign-up sheet provided by the ~~hearing examiner~~Hearing Examiner; or

(b) Testifying before the ~~hearing examiner~~Hearing Examiner and providing the name and address of the ~~party~~person and/or legal entity; or

(c) Delivering a letter to the ~~clerk~~Board Administrator, received before the close of the record in the case, indicating that the individual or entity is an interested ~~party~~person to the matter before the ~~hearing examiner~~Hearing Examiner and providing the ~~party's~~person of record's name, address and signature. Such letter may not be considered for any substantive content and will be received into evidence only for identification of parties to the case. In addition, petitions for or against a matter may not be used for purposes of conferring party status on those individuals signing the petition under this

provision.

~~6.2.3.2. Parties to Administrative Appeals From Notice of Violation.~~ Parties to an administrative appeal from the issuance of a notice of violation of county laws or regulations are limited to the ~~petitioner~~applicant, the owner of record and the administrative agency issuing the violation notice.

~~6.3.3.3. Representatives of Associations.~~ An individual representing any association must substantiate that ~~he or she is~~they are authorized to speak for and present the views of that association. The authorization may consist of a duly adopted resolution of the association signed by the president or attested by the secretary. The individual testifying must state the number of members in the association and its geographic boundaries.

~~6.4.3.4. Right to Counsel.~~ Any person of record or party may appear in person or be represented by counsel. A person compelled to appear before the ~~hearing examiner~~Hearing Examiner may also be represented by counsel. Before the hearing begins the attorney must give the ~~hearing examiner~~Hearing Examiner written notification of the names and addresses of individuals ~~he or she~~they will be representing and ~~his or her~~their own name, address, and telephone number.

~~6.5.3.5. List of Parties.~~Persons of Record. The ~~hearing examiner~~Hearing Examiner will prepare a list of all parties/persons of record and their representatives, which will be made part of the record of the case.

~~Article VII-~~

Article 4 Pre-hearing Matters

~~7.1.-Ex Parte Communications.~~ Except as otherwise provided in these rules, ~~outside of a hearing~~there shall be no ex parte communications between the ~~hearing examiner~~may not communicate with any person who is (or who may become) a Hearing Examiner and a party or ~~receive~~person of record to the case, any attorney representing any ~~communication from any such party or person of record in the case, or any person having a direct or indirect interest in the outcome of the case~~ regarding any matter relevant to the merits ~~or the law of a pending or proposed petition.~~ Any request for information concerning a pendingof the case. A person of record or proposed petition should be directed to the administrative assistant.

~~4.1. Correspondence.~~ Any party filing written correspondence with the ~~hearing examiner~~Zoning Board shall certify in writing that a copy of the correspondence has been served to all parties and persons of record to the case or to their representative and such writing shall be provided to the Board Administrator along with the correspondence.

4.2. Written Correspondence.

7.2.(a) Any person of record filing written correspondence with the Hearing Examiner must certify in writing that a copy of the correspondence has been served, and must serve a copy on, to all ~~parties to~~persons of record in the case or to their designated representative. If the correspondence is not accompanied by the written certification, the ~~hearing examiner~~Hearing Examiner will not consider it and will return it. Written correspondence filed with the Hearing Examiner, and service of a copy on persons of record, may be via email, hand delivery, regular mail or overnight courier.

(b) All correspondence received and copies of correspondence sent by the office or agency processing applications shall be included in the record. The substance of any oral communication held with a public agency processing applications, regarding the merits of a pending case, shall be reduced to writing and included in the record of that case.

4.3. Subpoenas.

(a) Issuance. Any person of record requesting the ~~hearing examiner~~Hearing Examiner to issue a subpoena must submit a written request to the ~~clerk at least twenty-one (21) days before the initial hearing~~Board Administrator. The request must contain the name and address of the person to be subpoenaed, a brief proffer as to the content and relevance of the person's expected testimony, and a list of all documents to be brought to the hearing by the subpoenaed person. If the request is granted by the ~~hearing examiner~~Hearing Examiner, the Hearing Examiner will issue the subpoena will be issued by the hearing examiner at least fourteen (14) days prior and the Board Administrator shall provide the signed subpoena to the ~~date~~person of the hearing record requesting the subpoena for service.

7-3.(b) Service. The person of record requesting the subpoena will be responsible for arranging service of the subpoena at least seven (7) days prior to the date ~~of the hearing.~~ The person the person subpoenaed is required to appear. All subpoenas shall be served on the subpoenaed person in the manner provided by the Maryland Rules of Civil Procedure for service in the Circuit Courts of this State. The person of record serving the subpoena must certify in writing that the subpoena was served personally or by certified mail; and such certification shall be provided to the Board Administrator.

(c) Response to Subpoena. No person shall disobey or fail to answer the subpoena. A response to a subpoena may be the filing of a motion to revoke the subpoena filed within seven (7) days of the service of the subpoena or prior to the date the person subpoenaed is required to appear, whichever comes first. A witness may be excused from attendance if they can show that their placement under subpoena was frivolous or oppressive or seeks information not relevant to the proceeding. No subpoena recipient shall be required to produce documents that are protected from production pursuant to a valid claim of privilege. That recipient shall respond to the subpoena by the filing of a motion to revoke the subpoena as to the privileged documents requested, and that motion shall set forth a general description of the documents subject to the privilege. The Hearing Examiner may rule on motions to revoke a subpoena.

(d) Enforceability. The Hearing Examiner or the person of record requesting the subpoena may request a court of competent jurisdiction to enforce the subpoena, compelling the attendance of witnesses and requiring the production of books, papers, documents and other materials relevant to the case. A person of record who violates a court order enforcing a subpoena shall be subject to fine or body attachment as may be ordered by the court enforcing the subpoena.

7.4.4.4. Pre-submission of Technical Reports. Any ~~petitioner or proponent~~ person of record wishing to submit a technical report or other similar documentary evidence to the ~~hearing examiner~~ Hearing Examiner must file a copy ~~of the report~~ with the ~~clerk~~ Board Administrator and shall certify that a copy was provided to all other persons of record at least thirty (30) days prior to the date of the initial hearing. Any ~~opponent or respondent~~ person of record wishing to submit a ~~responsive~~ report or other similar documentary evidence to the ~~hearing examiner~~ Hearing Examiner must file a copy of the report with the ~~clerk~~ Board Administrator and ~~send one~~ shall certify that a copy was provided to ~~the petitioner~~ all other persons of record at least ten (10) days prior to the date of the initial hearing. If technical reports are filed late, the ~~hearing examiner~~ Hearing Examiner may postpone the hearing to allow the other parties time to review the report, or take any other course of action as determined by the ~~hearing examiner~~ Hearing Examiner. Even if the report or other documentation is timely filed, the ~~hearing examiner~~ Hearing Examiner may postpone the hearing and require additional copies of the material for technical staff review. Herein, a “technical report” shall include a report, study or analysis prepared by a person of record or on behalf of a person of record which includes results of technical or scientific research or study and that may also include recommendations and conclusions of the research or study; graphical representations of the research data or results; demonstrative objects, pictures, models, displays, or other devices used to support facts that the person is trying to prove; or reports of conclusions of witnesses who have particular expertise about the subject of the hearing.

4.5. Motions.

(a) Preliminary Motions. A ~~party~~ person of record may request the ~~hearing examiner~~ Hearing Examiner to address a preliminary matter at least thirty (30) days prior to the date of the initial hearing by filing the request as a motion to the ~~hearing examiner~~ Hearing Examiner and certifying that a copy was provided to all persons ~~known to have an interest in the case~~ of record, including but not limited to the ~~Petitioner~~ applicant, the property owner, the administrative agency, or any person entitled to written notification under §2.203 of the Board’s Rules. The certification must state “any person interested in responding to this motion must file a written response with the ~~hearing examiner~~ Hearing Examiner within fifteen days of the date that the motion was filed.” ~~The hearing examiner~~ The Hearing Examiner may rule on the motion at any time after a response is filed or fifteen days after the filing of the motion.

7-5.(b) Other Motions. Any request for the Hearing Examiner to take action shall be made by written motion. The person of record filing the written motion shall and certify that a copy was provided to all persons of record, including but not limited to the

applicant, the property owner, the administrative agency, or any person entitled to written notification under §2.203 of the Board's Rules. The certification must state "any person interested in responding to this motion must file a written response with the Hearing Examiner within fifteen days of the date that the motion was filed." The Hearing Examiner may suspend the proceedings and may rule on the motion at any time after a response is filed or fifteen days after the filing of the motion.

7.6.4.6. Pre-hearing Conferences. Upon the request of a party-person of record at least fifteen days prior to the initial hearing or at the hearing-examiner'sHearing Examiner's own initiative, the hearing-examinerHearing Examiner may hold a pre-hearing conference for the clarification or simplification of issues. The conference will be held at the time and place given in the public notice for the case.

4.7. Site Visit. The hearing-examinerHearing Examiner will view the subject property before the commencement of the hearing and may view the property again before the close of the record. The Hearing Examiner shall not base any finding of fact upon observations made during a site visit unless they so state their intention and give all parties an opportunity to comment on such proposed findings of fact.

7.7.4.8. Documents. All documents (except Technical Reports) to be relied upon by the applicant or any person of record in support shall be submitted to the Hearing Examiner seven (7) calendar days prior to the scheduled hearing and applicant shall certify that copies have been provided to all persons of record. All documents to be relied upon by any person of record in opposition shall be submitted to the Hearing Examiner prior to the close of the opposition case and such person shall certify that copies have been provided to all persons of record. The Hearing Examiner may leave the record open to a date specified at the conclusion of the evidentiary hearing for the submission of documents specified by the Hearing Examiner. The record will close at close of business on the date specified regardless of whether the specified documents have been received. After the record has closed, a new hearing in accordance with the notice provisions of the original hearing must be conducted to receive any additional testimony or documents into the record. This additional hearing is solely in the discretion of the Hearing Examiner and may not be used to provide evidence or testimony that was available at the original hearing.
begins.

Article VIII—

Article 5 Conduct of Hearings, Generally

8.1.5.1. Open to Public. The public is invited to attend hearings. Any individual attending a hearing will maintain order and refrain from disturbing the orderly process of the hearing. The hearing-examinerHearing Examiner may clear the room of disruptive individuals or recess the

hearing.

5.2. Signing Up to Testify. ~~Any person unable to attend the initial~~

~~8.2.(a) Persons of Record in Support. All persons who are called to testify or desire to testify at a hearing must submit, no later than the day in support of the petition shall sign their own name to the roster in favor of the initial hearing, a written request to testify-petition or sign up and attend virtually on the designated virtual platform. If the hearing is continued, only the individuals who have timely submitted a written request, signed a roster or signed up and attended virtually on the roster-designated virtual platform prior to the end of the petitioner's case, or are called by the petitioner in rebuttal, will shall be permitted to testify. in support.~~

~~(b) Persons of record in Opposition. All persons who are called to testify or desire to testify at a hearing in opposition to the petition shall sign their own name to the roster in opposition to the petition or sign up and attend virtually on the designated virtual platform. If a hearing is continued, only the individuals who have signed a roster or signed up and attended virtually on the designated virtual platform prior to the end of the protestants' case or are called by the protestants in surrebuttal shall be permitted to testify.~~

5.3. Recording of Hearing. ~~Each~~

~~8.3.—In-person Hearings. For a solely in-person hearing, each~~ hearing will be recorded. The ~~administrative assistant~~Board Administrator will maintain a copy of the ~~tape~~ recording for at least two years after the ~~hearing examiner's~~

(a) Hearing Examiner's decision is issued. Transcripts of testimony will not be made.

(b) Virtual or Hybrid Hearings. Rule 2.401.E. of the Zoning Board Rules of Procedure shall apply to all hearings held by a Hearing Examiner in Board of Appeals cases and in Zoning Board cases as if fully incorporated herein.

~~8.4.5.4. Oath. Any person testifying before the hearing examiner~~Hearing Examiner must give his or her name and take the following oath: "Do you solemnly promise to speak truthfully in the testimony you are about to give?" I solemnly swear or affirm under the penalties of perjury that the responses given and statements made will be the truth, the whole truth, and nothing but the truth".

~~8.5. Order of Hearing. The ordinary, but not mandatory, order or procedure for the conduct of a hearing and the presentation of evidence, subject to reasonable changes agreed to by the parties or as ordered by the hearing examiner, is as follows:~~

~~(a) Disposition of outstanding preliminary matters:~~

~~(b) Petitioner's presentation:~~

~~(i) Testimony of witnesses:~~

5.5. Questioning of Authority of Hearing Examiner. Except as set forth in Article 6, Section 6.1, when hearing cases, the Hearing Examiner has the authority granted to the Hearing Examiner by these rules and the Howard County Code including the following authority:

(a) administer oaths;

(b) grant or deny applications for subpoenas;

(c) rule on motions to revoke subpoenas;

(d) dispose of procedural requests, motions, or similar matters and to order hearings reopened or consolidated, or to grant reconsideration of a ruling or a rehearing;

(e) call, examine and cross-examine witnesses and obtain and introduce into the record documentary or other evidence; allow the record to remain open for a specific time period; and in the discretion of the Hearing Examiner, require the designation of specific persons to conduct cross-examination on behalf of other individuals;

(f) change the order of presentation to promote fairness and efficiency;

(g) waive minor procedural defects or errors that do not affect substantive rights of the parties in order to proceed on the merits;

(h) ask parties to submit proposed findings of fact and memoranda of law;

(i) request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support of it;

(j) maintain orderly conduct of the hearing; and

(k) take any other action authorized or necessary under applicable law or these rules.

5.6. Conduct of Hearings.

(b) Order of presentation. The order of presenting cases shall generally be as follows. For purposes of this Section 5.6, "applicant" shall include an applicant or appellant, as the case may be, and the "protestant" shall include a respondent, or opponent, as the case may be. In all cases the order of presentation may be modified by the Hearing Examiner as the nature of the case warrants.

(c) Applicant's Presentation:

(i) Applicant's opening statement.

(ii) Direct examination of the applicant's witnesses.

(ii)(iii) Cross-examination of the applicant's witnesses by protestants, persons of record in opposition, and hearing examinerthe Hearing Examiner.

(c) Opposition's presentation:

(i) ~~Testimony~~Re-direct examination of witnesses.

(ii)(iv) ~~Questioning of applicant's~~ witnesses ~~by petitioner and hearing examiner.~~

(d) ~~Petitioner's rebuttal presentation.~~

(v) ~~Article IX~~Re-cross examination of applicant's witnesses.

(d) Persons of Record in Support of Application (Supporter(s)) Presentation:

(i) Supporters' Opening statements.

(ii) Direct examination of supporters' witnesses.

(iii) Cross-examination of supporters' witnesses by protestants, persons of record in opposition, and the Hearing Examiner.

(iv) Re-direct examination of supporters' witnesses.

(v) Re-cross examination of supporters' witnesses.

(e) Protestant's and Persons of Record in Opposition Presentations:

(i) Protestant's and persons of record in opposition opening statements.

(ii) Direct examination of protestant's and opposition's witnesses.

(iii) Cross-examination of protestant's and opposition's witnesses by the

applicant, persons of record in support, and the Hearing Examiner.

(iv) Re-direct examination of protestant's and opposition's witnesses.

(v) Re-cross examination of protestant's and opposition's witnesses.

(f) Referral for additional information. Cases may be referred to any agency which has processed or commented on an application, for the purpose of clarifying, updating, or completing the record.

(g) Correspondence and communications.

5.7. Persons of record at Hearings. An individual or any other legal entity may become a person of record to the proceedings before the Hearing Examiner by:

(a) Providing the name, address and signature of the person and/or of the legal entity's duly authorized representative on a sign-up sheet provided by the Hearing Examiner, or

(b) Testifying before the Hearing Examiner and providing it with the name and address of the person and/or legal entity; or

(c) Sending a letter to the Hearing Examiner, received before the close of the record in the case, indicating that the person is requesting to become a person of record and is an interested party to the matter before the Hearing Examiner and providing the person's name, address and signature. Such letters may not be considered for any substantive content and will be received into evidence only for identification of parties to the case. In addition, applications for or against a zoning matter shall not be used for purposes of conferring party status on those individuals signing the application under this provision.

(d) The Hearing Examiner shall prepare a list of persons of record, which shall be made a part of the record.

5.8. Case taken under advisement.

(a) Once a case has been fully presented, and the record closed, it shall be taken under advisement for the Hearing Examiner to render a decision. Thereafter, no new evidence may be entered into the record except:

(i) If upon motion by a person of record, good cause is shown why the evidence was not previously presented into the record; or

(ii) The evidence is presented pursuant to a remand of the Zoning Board; and

(iii) All persons of record have been afforded the opportunity to present evidence in rebuttal.

(b) Notwithstanding the above subparagraphs (i) through (iii), the Hearing Examiner may deny admission of additional evidence upon a finding that its probative value is outweighed by any cumulative effect, undue prejudice, or delay in the proceedings.

5.9. Virtual and Hybrid Hearings. Rule 2.401.E. of the Zoning Board Rules of Procedure shall apply to all hearings held by a Hearing Examiner in Board of Appeals cases and in Zoning Board cases as if fully incorporated herein.

Article 6

Evidence

9.1.6.1. Rules of Evidence. The ~~hearing examiner~~Hearing Examiner is not bound by the technical rules of evidence, but will consider and give appropriate weight to any relevant evidence as is commonly accepted by reasonable and prudent persons in the conduct of their affairs.

9.2.6.2. Evidence That Will Be Excluded. The ~~hearing examiner~~Hearing Examiner will exclude or refuse to hear evidence that is irrelevant, unreliable, or unduly repetitious.

9.3.6.3. Exhibits. Documentary evidence may be submitted in the form of copies, excerpts, photographic reproductions, or by incorporation by reference. Exhibits and plats admitted into evidence may not be mounted and must be folded to a maximum size of nine inches by fourteen inches. An exact duplicate of the exhibit may be mounted and used for presentation. Exhibits will be marked and held in the record. Parties are encouraged to pre-mark and submit exhibits before or at the beginning of the hearing. A ~~party~~person of record submitting exhibits must provide at least one copy for each of the opposition.

9.4.6.4. Amendments to ~~Petition~~Application. If a ~~petitioner~~an applicant proposes to amend a ~~petition~~an application during the course of the proceedings, the ~~petitioner~~applicant must submit the amendment as an exhibit.

9.5.6.5. Substantive Amendments. If the ~~hearing examiner~~Hearing Examiner determines that an amendment to a ~~petition~~an application is substantive, i.e., the amendment proposes a use that is likely to adversely impact vicinal properties, then the ~~hearing examiner~~Hearing Examiner will suspend the hearing for at least three (3) weeks. At least two (2) weeks prior to the rescheduled hearing, the ~~petitioner~~applicant must send written notice of the amendment and of the date, time, and place of the next hearing to all adjoining property owners, and must file an affidavit of written notification with the ~~clerk~~Board Administrator. In addition, the ~~petitioner~~applicant must post the property with notice of the date, time, and place of the next hearing for at least 10 days immediately before the next hearing in accordance with §2.203(b) of the Board's Rules. The ~~hearing examiner~~Hearing Examiner may request that DPZ review ~~and make recommendations on~~ the amendment.

9.6.6.6. Material Deemed Part of Record. For each case, the ~~petition~~application, the DPZ technical staff report, any previously submitted technical reports, the Howard County Zoning Regulations, the Howard County General Plan, and all relevant laws and regulations will be deemed to be part of the record without necessity of formal introduction. The Hearing Examiner may take judicial notice of all public documents.

9.7.6.7. Privileged Communications. The ~~hearing examiner~~Hearing Examiner will give effect

to the rules of privileged communications, such as the attorney-client privilege, or other communications made in professional confidence and recognized as privileged by law.

Article X – Decision

Article 7

Decision

10.1.7.1. Evidence to be Considered. The ~~hearing examiner~~Hearing Examiner may only consider the evidence in the record when making a decision; however, the ~~hearing examiner~~Hearing Examiner may use his or her experience, expertise, and knowledge of the property and the area in making a decision.

10.2.7.2. Burden of Proof. Unless otherwise provided by law, the burden of proof in a case heard by a ~~hearing examiner~~Hearing Examiner is as follows:

~~(a)~~ (a)—In all cases except those described in (b) and (c), the ~~petitioner~~applicant must show by a preponderance of evidence that the ~~petitioner~~applicant is entitled to the relief requested.

(b) In an appeal of an administrative agency’s issuance of a violation of a County law or regulation, the agency must show by a preponderance of evidence that the respondent has violated the law or regulation in question. The respondent must prove all affirmative defenses, such as nonconforming use, by a preponderance of the evidence.

10.3.(c) In any other appeal of an administrative agency decision, the ~~petitioner~~applicant must show by substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law.

~~10.4. — Legal Memoranda. The hearing examiner may, at his or her discretion, require the parties to submit legal memoranda to assist in the hearing examiner’s decision.~~

10.5.7.3. Referral to DPZ. The ~~hearing examiner~~Hearing Examiner may at any time before making a decision refer an issue in a case to DPZ for the purpose of clarifying or updating the record. DPZ’s response will be in writing. Before making a decision, however, the ~~hearing examiner~~Hearing Examiner will afford all parties an opportunity to comment on or challenge DPZ’s response.

10.6.7.4. Hearing Examiner’s Action. The ~~hearing examiner~~Hearing Examiner may grant or deny the ~~petition application~~, grant the ~~petition application~~ with modifications or conditions, or, in the case of an administrative appeal, remand the case to the agency for further proceedings. In piecemeal map amendment applications and development plan applications the Hearing Examiner shall issue a report in accordance with Article 6 of these rules.

10.7.7.5. Form of Decision. The ~~hearing examiner~~Hearing Examiner may announce his or her decision at the conclusion of a hearing or take the matter under advisement for later decision. In either instance, the ~~hearing examiner’s~~Hearing Examiner’s decision is not final until made in

writing and delivered to the ~~clerk~~Board Administrator for issuance and mailing. The decision will contain findings of fact, conclusions of law, and an appropriate order, and be signed by the ~~hearing examiner~~Hearing Examiner. If a ~~petition~~an application was substantively amended during the proceedings, the ~~hearing examiner's~~Hearing Examiner's decision will identify the amendments. In piecemeal map amendment applications and development plan applications the Hearing Examiner shall issue a report in accordance with Article 6 of these rules.

10.8.7.6. Time for Issuing Decision. The ~~hearing examiner~~Hearing Examiner will endeavor to issue a written decision within 30 days after the conclusion of the hearing. In piecemeal map amendment applications and development plan applications the Hearing Examiner shall issue a timely report in accordance with Article 6 of these rules.

10.9.—Mailed to Parties. When the ~~clerk~~Board Administrator receives the decision, the ~~clerk~~Board Administrator will promptly mail copies to all parties of record or their designated representatives.

7.7. In piecemeal map amendment applications and development plan applications copies of the report will be disseminated in accordance with Article XI-6 of these rules.

Article 8

Reconsideration

11.1.8.1. Right to Request. Any ~~party~~person of record to a case, with the exception of piecemeal map amendments and development plan applications, may request that the ~~hearing examiner~~Hearing Examiner reconsider the decision in the case.

11.2.8.2. Procedure. A request for reconsideration must be made in writing and submitted within 15 days after the issuance of the decision. The request must state the reasons for the request, and may include a request for a hearing and a request to suspend the decision. The ~~party~~person making the request must send a copy of the request to each ~~party~~person of record and certify that a copy has been sent to each ~~party~~person of record.

11.3.8.3. Response. Any ~~party~~person of record may file a written response to the request for reconsideration within 10 days of the filing of the request.

11.4.8.4. Hearing. At the discretion of the ~~hearing examiner~~Hearing Examiner, a hearing may be held on the request for reconsideration. The ~~hearing examiner~~Hearing Examiner will not consider new or additional evidence unless the evidence could not reasonably have been presented at the original hearing.

~~11.5.8.5.~~ Standard for Reconsideration. The ~~hearing examiner~~Hearing Examiner will revise the decision only upon a finding of mistake of fact or mistake of law.

~~11.6.8.6.~~ Decision. The ~~hearing examiner~~Hearing Examiner will issue a written decision on the request for reconsideration. If the ~~hearing examiner~~Hearing Examiner decides to deny the request, the ~~hearing examiner~~Hearing Examiner need not wait to receive responses to issue the decision. The ~~hearing examiner~~Hearing Examiner may reverse the original decision, modify it, or impose additional conditions. The ~~clerk~~Board Administrator will mail a copy of the reconsideration decision to each ~~party~~person of record.

~~11.7.8.7.~~ Time for Appeal. The filing of a request for reconsideration does not suspend the time for filing an appeal to the Board of Appeals unless the ~~hearing examiner~~Hearing Examiner has suspended the decision. Once an appeal to the Board has been taken, the ~~hearing examiner~~Hearing Examiner no longer retains jurisdiction to reconsider or suspend a decision.

Article 9 ~~Article 12~~ Appeals

~~12.1.9.1.~~ Appeals to Board of Appeals. A person of record aggrieved by a decision of the ~~hearing examiner~~Hearing Examiner may appeal it to the Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the ~~clerk~~Clerk on a form provided by the ~~clerk~~Clerk.

~~12.2.9.2.~~ Payment of Fees. At the time the appeal petition application is filed with the ~~clerk~~Clerk, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees adopted by resolution of the County Council.

~~12.3.9.3.~~ Forwarding of Record. Upon the filing of an appeal, the ~~clerk~~Clerk will promptly forward the original petition application and any amendments, the DPZ technical staff report, the list of parties of record, and the ~~hearing examiner's~~Hearing Examiner's decision to the Board's file.

~~12.4.9.4.~~ Notice to Parties. Upon the filing of an appeal, the ~~clerk~~Clerk will promptly notify all parties of record of the filing of the appeal.

~~12.5.9.5.~~ Appeal of Amended Petition Application. If an appeal involves a petition application that was substantively amended by the ~~petitioner~~applicant during the hearing proceedings, the case will proceed on the amended petition application unless:

(a) if the appeal is taken by the original ~~petitioner~~applicant, the appeal petition application indicates that the original ~~petitioner~~applicant elects to proceed on the original petition application; or

(b) if the appeal is taken by another ~~party~~person, the original ~~petitioner~~applicant notifies the Board in writing within 10 days after the date of notice of the appeal that

the original ~~petitioner~~applicant elects to proceed on the original ~~petition~~application.

~~12.6.9.6.~~ DPZ Report on Amended Petition Application. If an appeal proceeds on the amended ~~petition~~application, DPZ will prepare and submit to the Board a technical staff report ~~of its findings and recommendations~~ concerning the amendment.

~~12.7.9.7.~~ Public Notice. The person filing the appeal will bear the expense of providing notice and advertising the hearing in accordance with §2.203 of the Board's Rules.