

BOARD OF ZONING APPEALS FOR THE CITY OF HAGERSTOWN

Deliberative Session

On Wednesday, March 16, 2016, at 7:00 p.m., a meeting of the Board of Zoning Appeals for the City of Hagerstown was held in the Council Chamber, Second Floor, City Hall, Hagerstown, Maryland.

Travis Poole, chair; Gregory Deck; Andrew Durham; and James Stouffer were present.

The following appeal was considered and decided at the hearing:

Case No. Z-2016-01. Sheila Lowman, t/a Sheila's Jewelry & Loan, 1044 Virginia Avenue, Hagerstown Maryland 21740, pertaining to property located at **1044 Virginia Avenue**. The Board moved to grant the applicant's request for a special exception for retail sales and for a pawn shop.

VOTE: 4-0 Grant (Deck, Durham, Poole, Stouffer)

Other Matters Considered by the Board:

Revised Rules of Procedure.

Per discussion, the attached exhibit are proposed amendments to the Rules of Procedure discussed and proposed by the Board and will be voted upon for adoption at the next available meeting.

Adjourn.

The hearing and deliberations concluded at approximately 8:30 p.m.



Debra C. Calhoun – Secretary

**HAGERSTOWN BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ADOPTED: DECEMBER 20, 2000

DRAFT AMENDMENTS – MARCH, 2016

Regular text – unchanged ~~strikeout~~ – to be deleted red – new text

General Governing Rules

The Board of Zoning Appeals shall be governed by the provisions of all applicable State statutes, local laws, ordinances and these Rules. These Rules have been adopted and promulgated pursuant to ~~the Hagerstown Zoning Ordinance, Section 68-33, C.~~ **Land Management Code, Articles 1, 2, 3, 4, 6 and 8, Chapter 140 of the Hagerstown City Code)**

Officers and Duties

1. Chair~~person~~**man** and Acting Chair~~person~~**man**.

At the regular January hearing the Board shall elect from its members by a majority vote a chair~~person~~**man**, who may be elected to succeed himself/herself. The chair~~person~~**man**, or in his/her absence or incapacity an acting chair~~person~~**man**, shall decide on all points of order or procedure and may administer oaths and compel the attendance of witnesses. Each member shall have the discretion to visit each property which is the subject of an appeal to the Board.

However, members shall not visit said properties in sufficient numbers to constitute a quorum when on-site and members shall not discuss the merits or elements of the case with other Board members, the applicant or members of the public during such site visit or at any time outside of the hearing.

2. Secretary.

The Board shall have a secretary in attendance at all meetings. The secretary shall make a recording of all proceedings and shall keep records of all its official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. The secretary shall keep a record of the proceedings of each meeting and each hearing which shall include the vote of each member on each question, or, if absent or failing to vote, indicating such fact; the names and addresses of all witnesses, a summary of the facts on which the ~~decision~~ **Decision and Order** is based, and the decision rendered, and other actions of the Board.

Meetings

1. Quorum.

A quorum shall consist of three (3) members of the Board. ~~In the event that less than three (3) members are available to hear an appeal, the hearing for the appeal may proceed at the option of the applicant.~~

2. Time of Meeting.

- a. Regular meetings shall be held at least once a month ~~on the third Wednesday of each month at 7:00 p.m.~~, in accordance with the adopted meeting schedule or at such other hour as the Chair~~man~~ may designate, unless no appeals or applications are received (see Subsection 4, below). The first regular meeting in January shall constitute the annual organizational meeting of the board.
- b. Special meetings may be called by the Chair~~man~~ at any time provided that at least forty-eight (48) hours' notice shall be given each member before a special meeting is held. The Chair~~man~~ shall call a special meeting within ten (10) days of receipt of a written request from any two (2) members of the Board. Special meetings are not meant to be held for an appeal or application filed by an appellant or applicant.

3. Meetings Are Public.

All meetings of the Board shall be open to the public. The Board may close a meeting to the public in order to conduct an executive session only when addressing issues that are authorized to be addressed in private in accordance with applicable State law.

4. Cancellation of Meetings.

Whenever there are no appeals, applications for special exceptions or variance or other pertinent business to be considered at a regular meeting, the Chair~~man~~ secretary may dispense with such meeting by so notifying each member at least forty-eight (48) hours prior to the time set forth for such meeting.

5. Order of Business.

The order of business shall be:

- a. Roll call and Preliminary Matters.
- b. Public Hearings.
 - (1) Continued Cases.
 - (2) New Cases In Order Filed.
 - (3) End of Public Hearings; Announcement That Public Is Welcome To Stay.
- c. Action on Continued Cases.
- d. Action on New Cases.
- e. Other Business.
- f. Adjournment.

6. Voting and Disqualification of Members.

All matters shall be decided by roll call vote. Decisions on appeals alleging error in administrative enforcement; or on matters requiring public hearings (special exceptions, change in nonconforming uses, and variances) shall require the affirmative vote by a majority of the Board members present and voting. No member of the Board shall sit in hearing nor vote on any matter in which he/she shall be personally or financially interested, nor shall he/she vote on the determination of any appeal unless he/she shall have attended the public hearing thereon.

Public Hearings.

1. Matters Requiring Public Hearings.

A public hearing shall be required in all appeals from any Order, requirement, decision or determination made by an administrative official whose duty is to enforce the Zoning Ordinance; ~~in appeals for special exceptions to the Zoning Ordinance; and in all appeals for a variance from the terms of the Zoning Ordinance.~~ and for applications for special exceptions, expansions and changes to nonconforming uses and variances as authorized by the Zoning Ordinance (Article 4 of the Land Management Code) and for variances to the Floodplain Management Ordinance (Article 6 of the Land Management Code).

2. Notice of Hearings.

No appeal **or application** shall be decided until after due notice has been given and a public hearing has been held thereon. Due notice of a hearing shall be as follows:

- a. By publication of a notice thereof shall be advertised, ~~one (1) time~~ **two (2) times** in a newspaper having general circulation in the City. ~~The first insertion shall appear in such newspaper having general circulation in the City.~~ The first insertion shall appear in such newspaper at least fourteen (14) days prior to such hearing.
- b. By posting conspicuously a zoning notice on the property which is the subject of the application or appeal. The zoning notice shall be posted on the property at least ten (10) days prior to the date of the hearing.
- c. The owner of the property, or his agent, shall be notified at the time of the advertisement, by mail of the date, time, and place of the public hearing.
- d. The Board shall also, insofar as practicable, mail notices of the hearing of an appeal **or application** to all property owners which adjoin or ~~confront~~ **are across a public street or alley right of way from** the subject property, as said names and addresses appear on the latest tax rolls of the County. Compliance with this sub-paragraph shall not be a condition precedent to proper legal notice and no hearing or action taken thereon shall be deemed invalid or illegal because of any failure to mail the notices provided for in this sub-paragraph.

3. Continuances.

The Board may continue a hearing at another time and/or date once such hearing has been started; however the Board shall announce the date and hour of continuance of such hearing while in session.

4. Postponement of Hearing.

Whenever possible, requests for postponement of a scheduled hearing shall be filed ~~in writing with the Board~~ **with the secretary as soon as possible after discovering the need for the requested postponement, citing the reason or need for postponement.** ~~not less than five (5) working days prior to the date of the hearing.~~ The granting of such request shall be at the discretion of the Board.

5. Conduct of Public Hearings.

- a. Appearance of Applicant. Any person may appear in person or by agent or attorney at any public hearing. **In the case of administrative appeal, if a person an appellant fails to appear either in person or by agent or attorney, his appeal shall automatically be denied. In the case of an application for special exception, variance, nonconforming use or similar action, if an applicant fails to appear either in person or by agent or attorney, his application shall be dismissed and the applicant may re-file the application if they so choose.**
- b. Order of Proceeding. The order of proceeding in the hearing of each case at a public hearing shall be as follows:
 - (1) Reading of the public notice for the hearing by the Chair~~person~~**man.**
 - (2) Introduction of the case by the Zoning Administrator **(or his designated representative)**, at the discretion of the Board.
 - (3) Reading of written comments or reports concerning the appeal **or application**, at the discretion of the Board.
 - (4) Sworn testimony of witnesses in favor of the appeal.
 - (5) Sworn testimony of witnesses in opposition to the appeal.
 - (6) Sworn testimony in rebuttal, if desirable at the discretion of the Board. The right to rebut and explain adverse testimony; shall be allowed at the discretion of the Board.
- c. Time Limitations. Reasonable time limitations may be imposed on persons testifying at a hearing. Where time limitations are imposed, the record shall be kept open for ~~ten (10)~~ **seven (7)** days to receive written comments and reports.

- d. Evidence. The Board shall determine matters of relevancy in its discretion. Property owners, as well as affected parties and the general public, are encouraged to provide the maximum input of relevant evidence into the hearing, without the requirement of adherence to strict judicial principles pertaining to the rules of evidence. Hearsay evidence is admissible if credible and of sufficient probative force. It may even be the sole basis for a decision.
- e. Conclusions of Board Members. Conclusions of Board members shall be based upon the evidence and not upon the opinions of individual Board members.

Decisions.

1. Form of Decisions.

All decisions of the Board of Zoning Appeals shall be by written decisions **"Decision and Order" completed in a uniform format and** prepared by one (1) or more Board members. The basis for the determination of each appeal **or application** and a detailed summary of the facts (**"Findings of Fact"**) upon which the determination is made shall be recorded in the decision and shall constitute a part of the record thereof. ~~In the cases of variances, the decision shall state the unwarranted hardship and injustice upon which the appeal was based and which the Board found present. The decision shall also state in detail what conditions and safeguards are required.~~ **In the cases of variances, floodplain variances, special exceptions, nonconforming use issues and similar applications, a section entitled "Conclusions of Law" shall individually address all general and specific criteria as set forth in the Zoning or Floodplain Management Ordinance (as applicable, and as periodically updated and amended by the Mayor and City Council) under which the Board is charged with determining compliance in order for the relief to be granted. In the case of administrative appeal, the "Conclusions of Law" section shall explain the Board's reasoning for its decision in the case.**

2. Time of Decision.

~~Section 5.04(F) of the Zoning Ordinance~~ **Article 4 (Zoning), Section U.4 of the Land Management Code** requires that the Board render its decision within ~~thirty (30)~~ **forty-five (45)** days after completion of the hearings.

3. Notice of Decision.

A written copy of the Decision **and Order** of the Board shall be mailed to the **appellant or** applicant or his attorney or agent by certified mail, return receipt requested, **upon its completion and within ~~thirty (30)~~ forty-five (45) days** of the decision where the applicant is denied or where specific conditions are imposed. **Decisions that do not involve denials or conditions of approval shall be mailed by standard first class U.S. Mail.**

Amendments

These rules may be amended at any regular meeting by an affirmative vote of not less than **a majority of the members present at a meeting of which a quorum is met** ~~two (2) members of the Board,~~ provided that such amendment has been presented in writing to each member of the Board at least forty-eight (48) hours preceding the meeting at which the vote is taken.

ORDER OF PROCEDURE

Introduction

- All Board members
- Board secretary/recorder **and other staff.**

Function of Board

- **The decisions in cases heard tonight are based on general and specific criteria as enumerated in the Land Management Code.**

This is an Administrative Proceeding

- As such it will be conducted just as if it were a court of law, except that we will not follow as strictly the rules of evidence.
- Everyone who wishes to be heard on a particular case will be.
- Each of the cases will be heard in the order filed with the Board.

Procedure

- First hear applicant
- Then all witnesses for
- Then all witnesses in opposition
- Then (if necessary) final remarks from applicant
- We will then take the case under advisement and give you a decision within **forty-five (45) ~~thirty (30)~~ days. You are welcome to stay after your hearing and listen to the deliberations, but discussion is limited to the Board members.**

Right to Appeal

- Within thirty (30) days **of the date of the written Decision and Order provided by the Board.**
- Any party **who participated in the hearing and is aggrieved by the decision** may appeal to Circuit Court – this is the thirty (30) days after the date of the **Decision and Order ~~opinion~~**, not the date of the hearing.

Rules

- We have two rules which ~~we will ask you to~~ **all participants must** follow:
 1. Only remarks that we will consider are those given from the witness chair under oath; and

2. Ask that you confine remarks to things pertinent.

Call Case

- State:

Applicant

Request

Present Zoning

Incorporate file into the record

Oath to Witness

- Raise your right hand.
- DO YOU (and each of you) SOLEMNLY PROMISE DECLARE UNDER THE PENALTIES OF PERJURY THAT THE TESTIMONY YOU ARE ABOUT TO GIVE THIS BOARD, SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?
- Please be seated.