

## **Board of Zoning Appeals – Frequently Asked Questions (FAQ)**

Below are answers to common questions relating to zoning appeals. If an answer to your question is not listed, or if you need further information please contact the Planning Office at (301) 739-8577 x138, or E-mail at [planning@hagerstownmd.org](mailto:planning@hagerstownmd.org).

### **What is the Board of Zoning Appeals?**

The Board of Zoning Appeals (BZA) consists of five citizens, with one alternate, appointed by the Mayor and confirmed by the City Council. These are not salaried positions; however, they play an important role in ensuring that the zoning process is equitable. The Board rules on variances, special exceptions, appeals of administrative decisions, and alterations of Nonconforming Uses. Below, each case is described:

### **Variances**

A variance is permission to vary the bulk, area, height and/or yard requirements specified in the Zoning Ordinance.

The Planning Office is responsible for enforcing the Zoning Ordinance as it is written. There are times when individuals feel that there are extraordinary circumstances affecting their property that would justify a change--usually a reduction--in the requirements of the Ordinance. An example would be extending a porch two feet beyond the setback line in the front yard.

The Board can grant such a reduction if the Board finds it will not adversely affect the public interest, the spirit of the Ordinance, or the Comprehensive Plan, and the applicant shows literal enforcement of the provisions of the Ordinance would result in practical difficulty or unnecessary hardship. Merely desiring to deviate from the requirement of the Ordinance is not grounds for approval.

When applying for a variance, applicants must show the following:

- 1) That compliance with the strict letter of the restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; and
- 2) That the grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation than that applied for would not give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and
- 3) That the variance can be granted in such fashion that the spirit of the Ordinance will be observed and public safety and welfare secured.

### **Special Exceptions**

A special exception is a grant of a specific use that would not be appropriate generally without restriction. Many uses are listed as "permitted uses" in each zoning category (R-1, R-2, C-1, etc.). Uses are consistent with the purpose of the particular zoning district as is single- or two-family dwellings in the R-1 (Residential) district. Other uses may be allowed, but, due to their nature, they may have an adverse impact on neighbors, the neighborhood, or the City. For example, a day-care center may be compatible in the R-1 district, unless it is located on a street which cannot accommodate the traffic. Such uses are listed as "special exceptions" and may only be permitted if the Board of Zoning Appeals rules that the granting of the special exception will not materially or adversely affect the public interest. In granting any special exception, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Examples could include landscaping, hours of operation, number of employees, etc. The Board of Zoning Appeals may only approve special exceptions for uses listed in the ordinance as permitted special exemption uses.

### **Appeals of Administrative Decisions**

If an applicant believes that the Planning Office has erred in a ruling made in the enforcement of the Zoning Ordinance, they may appeal to the Board of Zoning Appeals. Appeals must be filled within 30 days fo the date of staff action.

### **Alterations of Nonconforming Uses**

A nonconforming use is a land use that legally existed before the adoption of the zoning regulations (March 1977) or a subsequent amendment of the ordinance or zoning map, but is not considered a permitted use in the particular zoning district (for example, a commercial building in a residential district). The Board of Zoning Appeals may approve the expansion of the use provided that the expansion is limited to 35% of those existing structures and parcels devoted to a nonconforming use. The Board may also approve a change of nonconforming use if the applicant shows that the proposed change will have less objectionable effects than the existing use with respect to traffic generation and congestion, including truck, passenger car and pedestrian traffic; noise, smoke, dust, fumes, vapors, gases, heat, odor, glare or vibration; storage and waste disposal; and appearance. If a Non Conforming Use is not operated for a year or more, nonconforming status is lost.

### **What do I need to apply to the Board of Zoning Appeals?**

The following must be submitted before an application is complete:

- 1) Fill out the required application. A printable copy can be found on the "Application Forms" webpage.
- 2) Prepare a scaled drawing showing the outline of the property, all existing buildings or structures, any proposed additions, and any other right-of-ways, roads or easements that are pertinent.
- 3) If the appeal is for a variance, prepare a hardship statement (see "Variances" above).

- 4) Pay fee at the time of filing (this covers the costs of postage, hearing notice sign and advertising in the local newspaper).

### **When will the Board of Zoning Appeals hear my case?**

The Board of Zoning Appeals hearings are normally scheduled for 7:00 p.m. in the Council Chamber at City Hall on the third Wednesday of every month, although the chairman has the right to change hearing dates and schedule special hearings. Regardless, all meetings are public and notice of their date and time is given well in advance.

Prior to a hearing, all adjoining property owners are notified of the hearing and the appeal is advertised twice in the local newspaper (Morning Herald and Daily Mail). The first advertisement is fourteen days before the public hearing and the second advertisement is seven days prior to the public hearing. A sign is posted on the property announcing the time, place and date of the hearing. This sign must be posted ten days prior to the public hearing. The applicant is responsible for picking up the sign at the Planning Department and displaying the sign during the 10-day period.

### **Where do I file?**

The Planning Office is located in City Hall and is open for business Monday through Friday, from 8:00 a.m. until 4:30 p.m. The deadline for receiving applications is approximately twenty days before the public hearing, usually on a Thursday or a Friday. Please consult the BZA Meeting Schedule for more information.

### **Who will speak for me at the Hearing?**

If you are to appear before the Board of Zoning Appeals, either as an applicant or opposing an applicant, you should begin your preparation by studying the Zoning Ordinance and the application to be submitted.

In considering your approach, you may wonder whether you, a friend, an attorney, or an expert witness should speak for you. Board of Zoning Appeals hearings are not legal proceedings as court trials are, and so individuals or their friends or relatives usually present the cases however, the Board operates similarly to a court (but less formally) taking testimony, swearing witnesses accepting exhibits as "evidence." People prefer to have an attorney help in mapping strategy, making pertinent comments, cross-examining witnesses (if necessary) and making an effective summary. Expert witnesses can also be beneficial to a case, but be sure that their credentials will support that they are an expert in their field. The Board will ask for credentials during the hearing.

### **What happens at the Hearing?**

The Board of Zoning Appeals attempts to keep the hearing as informal as possible, and yet meet the requirements for conducting a hearing so that the proceedings will bear the scrutiny of appeals. All hearings are recorded, and are open to the public. The following procedure is normally used in handling a case:

- 1) The applicant or a representative is asked to step forward and be sworn.
- 2) The Chairman asks for the applicant's (or representative's) name and address for the record.
- 3) The Chairman asks the applicant to explain what they are requesting and why the Board should approve the application. The explanation should relate to the reasons that the Zoning Ordinance permits approval of the application. If an attorney is representing the applicant, this information will usually be brought out through a series of questions.
- 4) Introduction of plats and documentation.
- 5) Witnesses, if any, are asked to be sworn and to testify.
- 6) The Board asks questions of the applicant, attorney, or witnesses.
- 7) The Board asks for testimony from anyone wishing to speak in favor of the appeal.
- 8) The Board asks for testimony from anyone wishing to speak in opposition to the appeal.
- 9) The applicant or the applicant's representative, is given the opportunity to summarize.

### **When will I know the decision?**

Typically, The Board discusses cases at the end of a session and votes on the case, so applicants may leave the meeting knowing the unofficial decision in their case. However, the official decision is a written "decision and order", which makes findings and conclusions based on the testimony. This order is written to be consistent with the Boards' deliberations that occurred at the end of the meeting. The Zoning Ordinance requires that the Board render a decision within thirty days of the hearing.

### **Can I appeal a decision made by the Board of Zoning Appeals?**

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court of Washington County within 30 days of the date of the Board's decision