

**COUNTY COUNCIL
OF
TALBOT COUNTY**

2022 Legislative Session, Legislative Day No.: August 9, 2022

Resolution No.: 333

Introduced by: Mr. Callahan, Mr. Leshner, Mr. Pack, Ms. Price

**A RESOLUTION TO APPROVE AMENDED RULES OF PROCEDURE OF THE TALBOT
COUNTY BOARD OF APPEALS**

By the Council: August 9, 2022

Introduced, read the first time, and ordered posted, with Public Hearing scheduled on Tuesday, September 13, 2022 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By order: 
Susan W. Moran, Secretary

A RESOLUTION TO APPROVE AMENDED RULES OF PROCEDURE OF THE TALBOT COUNTY BOARD OF APPEALS

WHEREAS, pursuant to § 503 of the Talbot County Charter and § 20-4(B) of the Talbot County Code, the Talbot County Board of Appeals (the “Board”) shall adopt rules of procedure governing its proceedings, which have the force and effect of law when approved by legislative act of the County Council of Talbot County (the “County Council”); and

WHEREAS, the Board has promulgated Rules of Procedure governing its proceedings, which were previously adopted by resolution of the County Council; and

WHEREAS, the Board has proposed that the amended Rules of Procedure attached hereto and incorporated herein by reference as Exhibit A be adopted as the official Rules of Procedure for the Board, subject to approval by the County Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND that the Rules of Procedure attached hereto and incorporated herein by reference as Exhibit A shall be and are hereby approved as the official Rules of Procedure for the Talbot County Board of Appeals.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon the date of its adoption.

PUBLIC HEARING

Having been posted and Notice, Time and Place of Hearing, and Title of Resolution No. ____ having been published, a public hearing was held on _____, 2022 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the second time:

Adopted: _____

By Order: _____
Susan W. Moran, Secretary

Callahan -

Divilio -

Leshner -

Price -

Pack -

Effective: _____

Exhibit “A”



TALBOT COUNTY BOARD OF APPEALS

RULES OF PROCEDURE

As Amended: _____, 2022

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TALBOT COUNTY BOARD OF APPEALS RULES OF PROCEDURE

Rule 1. Definitions.

A. In these Rules of Procedure, the following terms have the meanings indicated:

ADMINISTRATIVE APPEAL – A proceeding upon an application alleging error by an administrative official, board, department, or commission, or by the Planning Commission in a final order, requirement, decision, or determination under the Code.

APPLICANT – A person who files an Application.

APPLICATION – A claim for relief by an Applicant, including, but not limited to, special exception, variances, administrative appeals, or reasonable accommodations for the benefit of disabled persons.

APPROVAL – The relief the Board may grant upon an application, including but not limited to, a special exception, variance, or reasonable accommodation, and the relief grantee upon an application for administrative appeal including, but not limited to, a license, permit, authorization, exemption, waiver, certificate, registration, or any other form of permission issued by the County as a result of an administrative appeal.

BOARD – The Talbot County Board of Appeals.

CLAIM FOR RELIEF – The right of an Applicant to request an approval from the Board with respect to a transaction or any part of a transaction or a series of connected transactions generating the request for relief.

CODE – The Talbot County Code.

COUNCIL – The Talbot County Council.

DOCUMENT – The written or imaged material submitted prior to or during a Hearing including, but not limited to, an Application, plat, notice, statement, report, memorandum, letter, and map.

HEARING – A quorum of the Board convened to consider an Application.

MEETING – A quorum of the Board convened for transaction of public business, including Hearings.

PROFESSIONAL AGENT – A person authorized in writing, on a form provided by the Board’s Secretary, to represent a party and who has special knowledge of land, building or property constraints including, but not limited to, an architect, attorney, development consultant, contractor, engineer, or surveyor.

Rule 2. Rules of Procedure; Adoption and Applicability.

A. Adoption.

These Rules of Procedure are adopted pursuant to the authority set forth in Chapter 20 of the Code and are intended to supplement, but not supersede, the provisions therein. To the extent any provision herein conflicts with Chapter 20 of the Code, the latter shall control.

B. Applicability

To the extent not otherwise set forth in Chapter 20 of the Code, these Rules of Procedure shall apply to all Meetings of the Board, including all Hearings. To the extent not otherwise set forth in Chapter 20 and Chapter 190 of the Code or these Rules of Procedure, the current edition of Robert’s Rules of Order Newly Revised shall apply to all Meetings of the Board other than Hearings.

C. Policies.

The Board, by resolution, may adopt policies to implement their Rules of Procedure.

Rule 3. Organization.

A. Officers.

The Board shall elect a Chairperson and Vice-Chairperson annually at the first Meeting of each calendar year. The Chairperson shall preside at all Meetings including all Hearings. The Vice-Chairperson shall preside in the Chairperson’s absence. If both the Chairperson and the Vice-Chairperson are absent, the Board shall elect a Chairperson *pro tem*.

B. Quorum.

Three (3) members of the Board shall constitute a quorum. If less than five (5) members of the Board convene to conduct a Hearing, the Chairperson shall open the Hearing and advise the Applicant on the record of the following:

1. A majority vote of the full Board, or three (3) votes, is required to grant relief;
2. An Applicant is entitled, upon request, to postponement of the Hearing for lack of a full Board, at no expense to the Applicant for re-advertising; and
3. An Applicant is also entitled to proceed with the Hearing, but in making that election, the Applicant waives the right to a rehearing before the full Board if the Application is denied.

C. Legal Counsel.

The Board's legal counsel appointed pursuant to § 20-4(E) of the Code (the "Board Attorney") shall advise the Board and prepare the Board's written decisions and minutes.

D. Secretary.

The Planning Director shall designate a Secretary whose office shall be located in the Department of Planning and Zoning. The Board's Secretary shall perform the official duties assigned by these Rules.

Rule 4. Meetings; Hearings.

A. Frequency.

The Board shall convene every Monday, excluding legal holidays, as may be necessary to consider pending Applications. The Chairperson may ask the Board to convene at such other times as may be necessary and appropriate.

B. Location.

Regularly scheduled Meetings, including all Hearings, shall be held in the Bradley Meeting Room, South Wing, Courthouse, 11 N. Washington Street, Easton, Maryland, or at such other locations as may be designated by the Board. If the Board finds it necessary to designate a different location for a Meeting including a Hearing, the Board's Secretary shall publish or post timely and adequate notice of the change of location.

Rule 5. Applications.

A. Forms.

Applications shall be filed on a form approved by the Board and obtained from the Board's Secretary or the County website.

B. Fees.

In addition to the filing fee required by § 20-5 of the Code, the cost of postage for notification to all adjoining property owners, as required by the Code, shall be filed with the Application. An Applicant may elect to provide postage stamps in lieu of the cost for the notification.

C. Signature.

All Applications shall be signed by the Applicant or the Applicant's Professional Agent under penalty of perjury.

D. Incomplete Applications.

All information required by the Application form shall be provided or the absence must be satisfactorily explained on the form. An Application that does not comply with this requirement will be considered incomplete and returned to the Applicant pursuant to § 20-5 of the Code.

Rule 6. Filing and Service.

Documents submitted prior to a Hearing shall be filed with the Board's Secretary, as set forth in (A) below. Documents submitted at the Hearing shall be filed with the Board at the conclusion of the Hearing.

A. Copies.

Documents submitted prior to a Hearing shall be filed on the County's website. Applicants shall also provide the number of written copies designated by the Board's Secretary.

B. Service.

Documents submitted prior to a Hearing shall be served on all parties of record and on the Board Attorney. If a party to be served is represented by a Professional Agent, service shall be made upon that party's Professional Agent.

C. Manner.

Service of Documents shall be made by first-class mail, postage prepaid, addressed to parties of record as shown in the Board's file. All Documents filed with the Board other than exhibits filed during a Hearing shall be accompanied by a certificate of service, signed by the serving party or that party's Professional Agent certifying that service has been made in accordance with this Rule.

D. Hearing Exhibits.

A Document offered or admitted into evidence as a Hearing exhibit shall be provided to all other parties. An additional copy shall be provided for each Board member and the Board's Attorney. A person wishing to offer an exhibit at a hearing may contact the Board's Secretary to determine how many copies are required.

Rule 7. Statement of the Case.

An Applicant shall provide a concise narrative statement setting forth in detail all facts upon which the Applicant relies to support any claim for relief in accordance with applicable sections of the Code.

Rule 8. Continuances

A. Generally.

Meetings, including Hearings that have been properly convened may be continued by the Board without re-advertisement provided that the Board designates, at or before adjournment of the original Meeting or Hearing the date, time, and place at which the Meeting or Hearing is scheduled to resume.

B. Posting Notice.

The Board's Secretary will post the date, time, and place of all Meetings including Hearings on the Board's official website and on the bulletin board adjacent to the Bradley Meeting Room, South Wing, Courthouse, 11 N. Washington Street, Easton, Maryland.

Rule 9. Conduct of Meetings.

A. Open Meetings Act.

All Meetings, including Hearings, shall be open to the public in accordance with the Maryland Open Meetings Act, Md. Code Ann., General Provisions § 3-301 *et seq.* (the "Open Meetings Act").

B. Recordings and Transcripts.

Meetings, including Hearings, shall be electronically recorded. Recordings shall be transcribed only at the request and expense of the person desiring the transcript. A request for a transcript must be in writing and addressed to the Board's Secretary. The Board's Secretary shall advise the person desiring the transcript of the County's policy and estimated cost of transcription as determined by the transcription company.

C. Minutes.

The minutes shall: (1) identify each item that the Board considered; (2) report the action taken by the Board on each item; and (3) record the vote taken on each item. Minutes should be prepared as soon as practicable, but in no event more than thirty (30) days after a Meeting or Hearing. Board minutes shall comply with § 3-306 of the Open Meetings Act. Minutes and electronic recordings of an open session shall be available for public inspection and copying by a person at that person's sole expense.

D. Participation.

Any person may: (1) participate in a public Hearing; (2) produce Documents and other relevant evidence to support their position; (3) subpoena witnesses to testify and produce Documents or other relevant evidence; and (4) proceed *pro se* or be represented by a Professional Agent. A witness may be questioned by only one representative for an Applicant or opponent unless otherwise permitted by the Board.

E. Record.

Testimony and exhibits, including those exhibits offered but not admitted into evidence, shall become part of the record. Original exhibits may be withdrawn with the Board's permission by substituting an acceptable duplicate or copy for the Board's record.

F. Witnesses.

Prior to offering testimony, a witness shall state their full name and mailing address for the record, and shall swear or affirm, under the penalty of perjury, that the testimony to be given is true and correct. The Chairperson, or a designee, shall administer the oath.

G. Order of Presentation.

The order of presentation is that set forth in § 20-17 of the Code.

H. Evidence.

The rules of evidence set out in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-213, apply in all Hearings. A copy, modified to comply with the nomenclature of these Rules, is attached as Exhibit "A" and incorporated by reference herein.

Rule 10. Closed Sessions.

The Board may meet in closed session as authorized by § 3-305 of the Open Meetings Act.

Rule 11. Decisions.

A. Form.

Decisions shall be in writing and shall contain findings of fact and conclusions of law. A written decision shall be signed by each member of the Board who participated in the Hearing on the Application.

B. Time.

The Board's decision shall be rendered within thirty (30) days from the close of the Hearing unless the time is extended by the Board. The Board's Secretary shall furnish a copy to each of the parties, a party's Professional Agent, and witnesses.

C. Date of Decision and Appeal Period

The Board's decision shall be dated and final when signed by the last Board member present at the Hearing. The time for noting an appeal runs from the date of the final written decision as set forth in §20-23 of the Code.

D. Special Exceptions and Variances.

Following the denial of a special exception or variance, no Application for a special exception or variance for the same premises which is substantially the same as the one denied shall be filed within one (1) year from the date of denial unless such Application is based on new evidence or proof of a change in conditions.

Rule 12. Withdrawn or Postponed Applications.

A. Withdrawals.

An Application may be withdrawn prior to the Hearing by delivering written notice of withdrawal to the Board's Secretary. An Applicant withdrawing an Application for a special exception or variance is precluded from filing another Application for the same or substantially the same relief for six (6) months from the date of withdrawal. By majority vote, for good cause shown, the Board may waive the six (6) month refiling prohibition.

B. Postponements.

Upon written request or upon its own motion, and in its sole discretion, the Board may postpone a Hearing for a period not to exceed six (6) months. In its sole discretion, for good cause shown, the Board may extend the postponement for an additional twelve (12) months.

Rule 13. Time Extensions.

A. Rules.

Upon written request of a party, or on its own motion, and in its sole discretion, the Board may extend the time for compliance with these Rules. A party requesting or obtaining an extension shall pay all resulting costs.

B. Implementation.

The Board shall establish a time limitation for the implementation of an Approval. The time limitation shall not exceed eighteen (18) months. Failure to obtain required building permits, zoning certificates, site-plan approval, or other necessary authorizations within the prescribed time voids the Approval. Upon submittal of an extension request, prior to expiration of the initial time limitation, and for good cause shown, the Board may extend the time to implement the approval for one additional period not to exceed eighteen (18) months.

C. Approvals.

An Applicant may request a modification of a time limitation or expiration date upon submittal of an extension request application. Following advertisement and public hearing, the Board in its sole discretion, may grant one (1) extension not to exceed the maximum time period granted in the original approval.

D. Appeals.

If an Approval is appealed, the appeal of the Approval stays the running of the time limitation until a court decision upholding the Approval is filed with the Clerk of the Circuit Court.

Rule 14. Reconsideration.

A. Reconsideration

The Board may reconsider its decisions upon its own motion or upon request of any party, provided such request is received not more than ten (10) days from the date of the hearing at which the Board reached and announced its decision, or with ten (10) days after discovering new evidence that was not previously available and that could not have been discovered in the exercise of reasonable diligence prior to the hearing. A party requesting reconsideration shall serve a copy of the motion for reconsideration on all persons who participated in the Hearing. Any such person opposing reconsideration may offer argument to rebut or refute the same.

B. Reconsideration Procedure.

A party requesting a reconsideration shall produce written factual information that supports the party's claim that newly discovered evidence (1) might have a substantial bearing on the outcome of the Application and (2) could not have been discovered by the exercise of due diligence prior to the original Hearing. If the Board determines that the proposed newly discovered evidence meets this test, it may, in its sole discretion, order a rehearing. The rehearing shall be legal argument regarding the newly discovered evidence. A party opposing the request may offer argument to rebut or refute the requesting party's claim. The Board's decision on the request for rehearing shall be reversed only for an abuse of discretion.

C. Fees.

A party requesting a rehearing shall pay the same fee and costs required for an original Hearing.

D. Board.

Reconsideration of a prior Board decision shall be made by the same Board members who participated in the original Hearing. If any such member is unavailable, a new member may participate in the reconsideration after reviewing the electronically recorded or transcribed testimony and exhibits from the original Hearing.

Rule 15. Open Sessions

A. Recording

A person desiring to videotape, televise, photograph, broadcast, or record a Meeting including a Hearing shall submit a written request to the Board's Secretary at least five (5) business days in advance thereof. The requested activity may be permitted only with the prior consent of the Board.

B. Disruption.

The Chairperson may request that a disruptive individual leave the Meeting or Hearing, and may have a disruptive individual who continues to interfere with the proceedings removed. In the absence of malicious action directed at a disruptive individual by the Board, an individual Board member or the Board's agents, the Board, its members and its agents are not liable for having a disruptive individual removed as provided in § 3-303(c) of the Open Meetings Act.

Rule 16. Reimbursement of Fees.

A. Advertising Fees.

Newspaper advertising fees for withdrawn Applications will be reimbursed only if time permits cancellation of the public notice before publication.

B. Filing Fees

Filing fees and postage expenses actually incurred shall not be refunded to an Applicant for a variance or special exception. Filing fees for administrative appeals shall be reimbursed to a prevailing party.

Rule 17. Communications.

A. General.

The Board shall not consider any written or oral *ex parte* or private communication from a person or organization that may relate to the merits of an application pending before the Board. An *ex parte* communication must be noted in the case record. The parties shall be given an opportunity to comment on the communication.

B. County Staff.

The Board is not precluded from obtaining advice, counsel or assistance from County department staff members, provided the staff member or department is not a party to, or directly involved in, a pending matter for which the advice, counsel, or assistance is sought.

Rule 18. Judicial Review.

A. General.

A person who participates in a Hearing and who is aggrieved by a Board decision may seek judicial review in the Circuit Court for Talbot County within thirty (30) days of the Board's final written decision. Petitions for judicial review of a Board decision shall proceed in accordance with Title 7, Chapter 200 of the Maryland Rules of Procedure. To the extent any provision of these Rules conflicts with Md. Rule 7-201, et seq., the latter shall control.

B. Notice of Petition.

Upon receiving the copy of the petition from the Circuit Court, the Board Secretary shall give written notice promptly to all parties to the agency proceeding that:

1. A petition for judicial review has been filed, the date of the filing, the name of the court, and the civil action number; and
2. A party who wishes to oppose the petition must file a response within thirty (30) days after the date the agency's notice was sent unless the court shortens or extends the time.

C. Certificate of Compliance

Within five (5) days of the mailing or electronic transmission, the Board Secretary shall file with the Circuit Court a certificate of compliance with subsection (B) of this section, showing the date the agency's notice was mailed or electronically transmitted and the names and addresses of the persons to whom it was sent.

D. Record.

On judicial review of a Board decision, the record to be transmitted to the Court shall consist of the following:

1. The Application;
2. All Documents filed with the Board in connection with the Application;
3. An official transcript of the Hearings, certified by the Board's Secretary;
4. All exhibits offered into evidence, indicating separately those admitted and those excluded; and
5. The Board's written decision.

E. Costs.

The Board's Secretary shall not prepare the record until the Petitioner makes suitable arrangements to:

1. Pay, in advance, the costs of transcribing the testimony, which includes but not limited to, the cost of the original transcript, a copy for the Board, and a copy for all parties who participated in the Hearing and who have responded that they wish to participate in the, judicial review proceeding.
2. Pay the costs of preparing the record, including a complete copy of the record that is to be retained by the Board; and
3. Pay the costs of processing the petition which shall include the cost of copies, postage and an administrative processing fee as may be designated from time to time by the Council.

F. Inspection.

The Board's Secretary shall notify the parties that the record is available for their inspection before submitting it to the Court.

G. Filing Record.

The Board's Secretary shall submit the original record to the Court and shall retain a complete copy of the record for the Board.

Date of Recommendation to County Council: July 11, 2022

VOTE:

___ Cavanaugh –

___ Dorsey –

___ Shortall –

___ Krebeck –

___ Adelman –

ADOPTED:

Certified: _____
Christine Corkell, Secretary to the Board

I hereby certify that the foregoing Rules of Procedure were duly approved by the Board of Appeals on July 11, 2022, were forwarded to the Talbot County Council and duly approved by Resolution No. ____, on _____, 2022, and finally adopted by the Board pursuant to Resolution No. 2022-01 on _____, 2022.