



# HAVRE DE GRACE LAND USE APPROVAL PROCESS

PLANNING COMMISSION AND BOARD OF APPEALS - ROLES AND RESPONSIBILITIES

# OVERVIEW OF ROLES



# INTRODUCTION TO APPROVAL RESPONSIBILITIES

## Planning Commission Role

The Planning Commission formally approves site plans focusing on code compliance and minimizing impact on nearby properties.

## Board of Appeals Role

The Board of Appeals approves special exceptions/conditional uses, variances, and hears and decides appeals of administrative decisions in land use matters.

## Planning Department Functions

The Planning Department manages application intake, scheduling, interagency review, and approves smaller projects while enforcing compliance.

## Department of Public Works Duties

DPW oversees public infrastructure adequacy, technical engineering reviews, and manages construction agreements for development projects and compliance.

# PLANNING COMMISSION RESPONSIBILITIES



## FORMAL APPROVAL AND OVERSIGHT OF DEVELOPMENT PROJECTS

### Role of Planning Commission in Land Use Matters

The Planning Commission reviews site plans (per City Code Chapter 155) and preliminary subdivision plans (Per City Code Chapter 173) to ensure compliance with zoning and land-use policies. See Code Section 155-11; City Code 25-24 A & B; City Code Sections 173-2, 173-8, 173-10.

### Evaluation Criteria

Key considerations include setbacks, screening, lighting, and operational hours to minimize neighbor impacts and consistency with the City's Comprehensive Plan and zoning code. See City Code Section 155-12; 173-8.

### Agency Collaboration

The Commission incorporates feedback from Planning, Public Works, Fire, Police, and State agencies such as the State Highway Administration for comprehensive project review.

### Approval Process

The Commission conducts a public hearing, and after presentation by the applicant, public comment, and input from the City's Planning and Public Works departments and agencies, approves, denies, or conditions projects and documents decisions in official findings and conclusions and formal approval letter. May table applications to gather more information. Chair must sign final plat. See City Code Section 155-13.

# BOARD OF APPEALS RESPONSIBILITIES



## CONDITIONAL USE AND SPECIAL EXCEPTIONS, VARIANCE AND APPEALS

### Administrative Review

- Administrative review of allegations of errors in final orders or decisions by administrative officials, City departments, the Planning Commission, or Historic Preservation Commission (City Code 97-10).

### Special Exceptions/Conditional Use

- Hears and decides special exceptions and conditional uses, imposing conditions as needed.

### Variances

- Hears and decides variance requests when strict application of zoning creates hardship. City Code Section 25-15C. See also, Section 102-16 (variances to landscape plans); Section 122-7 (variance from parking requirements).

# PLANNING DEPARTMENT RESPONSIBILITIES



## ADMINISTRATIVE MANAGEMENT OF APPLICATIONS AND ENFORCEMENT/COMPLIANCE

### Application Review Process

The department schedules a preliminary conference with applicant, reviews applications for completeness within ten days and notifies applicants of missing information promptly. (City Code Section 155-8). Coordinates agency comments and prepares staff report recommending approval, denial, or conditions. Reviews and approves forest stand delineations, forest conservation plans per City Code 81 (see City Code Section 155-22 C).

### Planning Commission Coordination

Schedules hearings, coordinates public notices, and circulates plans among city, county, and state agencies for feedback and approval.

### Project Approval Authority

Planning Director can approve or deny smaller projects without Commission involvement, streamlining the approval process. Planning department approves final site plan to include all changes required by the Commission. City Code Section 155-13.

### Compliance Enforcement

Enforces compliance by issuing violation notices and ensuring corrective actions are completed to uphold City Code and some state and/or county regulations.

# DEPARTMENT OF PUBLIC WORKS RESPONSIBILITIES



## INFRASTRUCTURE ADEQUACY AND TECHNICAL REVIEW

### Infrastructure Capacity Verification

DPW certifies roads, water and sewer capacities and reviews technical studies to ensure infrastructure supports developments (per City Code Chapter 2). Applicant demonstrates compliance with APFO to the Director of DPW and Planning who verify capacity to PC.

### Stormwater and Environmental Compliance

DPW oversees and approves stormwater management, grading, and erosion control to prevent environmental damage. City Code Chapter 169 (required per Section 155-18)

### Public Works Agreements and Approvals

DPW drafts PWAs detailing construction obligations and issues Notice to Proceed after all conditions are met. Signs final plats and sets bonding requirements.

### Inspection and Off-site Improvements

DPW manages off-site improvement guarantees and inspects completed road or utility upgrades.

# DUE PROCESS REQUIREMENTS



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- **Core Due Process Principles**
- **Adequate Notice:** Provide clear, timely notice of the time, place, and subject of the hearing to affected parties. Maryland statutes require mailed notice for certain Board of Appeals matters at least 7 days in advance (see Md. Land Use Article §22-311(d)).
- **Opportunity to Be Heard:** Offer a meaningful chance to present testimony, documents, and expert reports before the record closes. The chair should announce when public testimony is closed and deliberations begin.
- **Neutral Decision-Maker:** Members must be impartial, avoid conflicts, and base decisions solely on the record—reflecting the body's quasi-judicial role.
- **Evidence-Based Decision:** Decisions must rest on substantial evidence in the record (application, staff/agency reports, expert testimony, site facts) rather than speculation or popularity.
- **Written Findings & Conclusions:** Adopt written findings of fact and conclusions of law that connect the facts to the governing criteria; these are essential for judicial review.
- **Complete Public Record:** Maintain minutes/recording, exhibits, staff reports, public submissions, and the final written decision; Maryland requires commissions to keep records of findings and determinations open to the public.

# HOW ARE DUE PROCESS REQUIREMENTS MET?

- **Statutory notice:**
  - Planning Department mails notice of Board of Appeals/Planning Commission hearings to the appellant and adjoining/opposite owners at least 7 days before the hearing; follow any local posting and publication rules. (Md. Land Use §22-311(d)).
- **Adopted rules:**
  - Planning Commission and Board of Appeals adopt rules of procedure for orderly and predictable proceedings.
- **Participation, Questioning, and Cross-Examination**
  - Opportunity to question: Due process requires a fair chance to respond to adverse evidence.
  - Formal cross-examination is not universally required unless local rules provide for it or the Chair allows it.
  - Cross examination can be done through the Chair, by rebuttal, or by written submissions.

# HOW ARE DUE PROCESS REQUIREMENTS MET?

- **Making the Record**
- Order of presentation: Follow an announced order (staff/applicant/opponents/rebuttal), allow exhibits, and ensure all materials are entered into the record.
- Keep time limits reasonable and even-handed.
- Chair can request a recess to review material presented at the hearing; but the Planning Commission or Board of Appeals cannot deliberate as a quorum except in an open meeting.

  

- **Closing the Record**
- Closing the record: The Chair should clearly state when testimony is closed and whether written submissions will be accepted thereafter, with deadlines. Record all motions and votes.
- Written factual findings and determinations will be prepared by the Staff and Chair based on the proceedings and must be accessible to the public.

# SUBSTANTIVE FINDINGS AND CONCLUSIONS



# FINDINGS AND CONCLUSIONS

## Findings of Fact

Planning Commissions and Boards of appeals in land use matters must provide specific findings of fact and conclusions of law to support their decisions.

The requirement for detailed findings serves to enable meaningful judicial review and ensure administrative decisions are based on substantial evidence in the record. The absence of adequate findings may constitute an error of law and result in the commission/board's decision being deemed arbitrary and capricious by the Court.

## Conclusions of Law

Legal interpretations and decisions are made based on the established facts, guiding the application of the law.

## Basis for Final Judgment

Findings of fact and conclusions of law together form the foundation for a final ruling in the Board of Appeals and Planning Commission hearings.

# HOW ARE FINDINGS OF FACT AND CONCLUSIONS DETERMINED?

- **Evidence-Based Determination**
  - Findings of fact must be based solely on probative evidence in the record, including applications, staff reports, site characteristics, expert testimony, and credible public comment. This ensures decisions are grounded in documented facts.
- **Clear Procedural Framework**
  - Maryland law requires planning commissions and boards of appeals to maintain records of resolutions, findings, and determinations. A consistent process—closing the hearing, identifying legal criteria, summarizing facts, and applying them—is essential.
- **Identification of Legal Standards**
  - Findings must identify the relevant zoning or land-use criteria and explain how the facts relate to those criteria. This mirrors quasi-judicial decision-making.
- **Distinguishing Review Standards**
  - Findings must reflect nondiscretionary standards (e.g., setbacks, permitted uses) and discretionary standards requiring judgment (e.g., compatibility; community impacts).

# HOW ARE FINDINGS OF FACT AND CONCLUSIONS DETERMINED?

- Reliance on Substantiated Evidence
- Findings may not be based on speculative statements or unsupported opinions. Credible evidence—such as expert analysis—is required.
- Creating a Defensible Record
- Well-written findings create a clear record for judicial review by explaining the reasoning behind the decision.
- Neutral, Objective Application of Ordinances
- Commissions and boards must apply existing laws and cannot create new policy through findings. Decisions must remain within statutory authority.
- **SUMMARY:**
- Proper findings of fact identify legal standards, document relevant facts, apply those facts logically to the standards, and create a defensible, evidence-based decision record.

# WHAT IS “PROBATIVE EVIDENCE”?

- Planning Commissions and Boards of Appeals must base decisions on the record, which includes:
  - Staff reports
  - Expert testimony
  - Documents
  - Studies
  - Site plans
  - Credible public testimony
  - But not on generalized fears, speculation, or unsupported claims.

# WHAT IS “PROBATIVE EVIDENCE”?

- Examples of probative evidence
  - A traffic engineer’s report showing projected peak-hour volumes
  - A certified appraiser’s analysis of property-value impacts
  - A stormwater plan prepared by a licensed engineer
  - Official zoning maps or ordinance text
  - Photos
  - measurements or site surveys

# WHAT IS “PROBATIVE EVIDENCE”?

- Examples of non-probative evidence
  - “Everybody knows traffic will get worse””
  - I feel like this will lower property values” without proof
  - Rumors, assumptions, or irrelevant issues

# EXAMPLE – PLANNING COMMISSION SITE PLAN REVIEW

- A property owner wants to build a commercial building on a lot.
- The Directors of Planning, DPW and/or their designees schedule a preliminary conference.
- The Planning Department determines completeness of application and circulates information for various County and State agency approvals, which includes DPW, Critical Area Commission, Police Department, Ambulance Corps, Susquehanna Hose Company, Fire Marshall, Harford County Health Department and/or State Highway, among others.
- Review by City staff includes adequate public facilities and stormwater determination by DPW, and submission of forest stand delineation and forest conservation plan by Department of Planning, among other items.
- Planning Department schedules the hearing and provides the notice and staff report. PC must review and determine site plan conforms to Ch. 155 and all required items are submitted, and zoning code setbacks, lot coverage and design elements. Ch. 205.
- PC can consider adverse audio/visual impacts on surrounding properties and ensure sufficient setbacks and screening, hours of operation per 155-12.
- PC approves, denies or approves with conditions. Must state the basis for the conditions if any.
- Planning Director makes sure required conditions are in the final site plan, which is signed by the Chair.

# SAMPLE LANGUAGE FOR MOTION ADOPTING FINDINGS AND CONCLUSIONS

- Motion
- I move based on the application and exhibits submitted, the applicant's testimony and public testimony, the staff report, the staff factual findings and staff recommendations for matter # \_\_\_\_\_ [preliminary subdivision/site plan/variance] finding it in compliance with sections \_\_\_\_\_ and \_\_\_\_\_ of the City Code [and with the \_\_\_\_\_ conditions (read into the record)]
- Staff will prepare the formal document based on the above to be signed by the respective chairs of the PC/BOA
- Example hearings from Gaithersburg:
  - [Video Outline - Gaithersburg, MD](#) (site plan)
  - [Video Outline - Gaithersburg, MD](#) (special exception)

# COMPARISON BOA v. PC

# BOA HEARINGS

- Boards of appeals exercises quasi-judicial authority, conducting evidentiary hearings to review administrative decisions, grant variances, and hear appeals alleging errors in orders or determinations made by administrative officers.
  - Authority granted under Md. Code, Land Use, 4-305
- When a board of appeals reviews a decision from a planning commission or other administrative official, it typically conducts a de novo hearing, meaning the board is not bound by the earlier administrative decision and reviews the matter completely anew.
- The board of appeals possesses all the powers of the administrative officer from whom the appeal was taken.

# PC HEARINGS

- Planning Commissions primarily exercise advisory and administrative functions, making recommendations to legislative bodies on zoning matters and reviewing site plans and subdivision applications.
- Planning Commission hearings for site plan and subdivision review, are quasi-judicial evidentiary hearings where the commission applies statutory standards to facts presented through testimony and exhibits.
- The Planning Commission's role is generally to review compliance with City Code and propose reasonable changes to development plans and make recommendations, but it lacks the authority to review zoning classification decisions made by legislative bodies.
- Planning Commission recommendations are typically advisory and non-binding unless specific ordinances or regulations make compliance mandatory.
- Appeals from Planning Commission decisions go to the board of appeals rather than directly to Circuit Court.

# STANDARDS FOR GRANTING VARIANCES

## GENERAL RULES - VARIANCES

- Courts have consistently held that zoning boards of appeals are to exercise their variance power sparingly and only under exceptional circumstances.
- Self-created hardships arising from an applicant's own actions generally do not support granting a variance.
- The variance must also be the minimum necessary to afford relief and must be in strict harmony with the spirit and intent of the zoning regulations from which the applicant seeks relief.

## TWO STEP ANALYSIS – FIRST STEP – IS THE PROPERTY UNIQUE?

- Maryland courts have established a two-step analysis for variance applications.
- First, the applicant must prove that the property in question is unique, meaning the property must possess characteristics that distinguish it from surrounding properties.
  - The uniqueness analysis must be limited to the property's physical characteristics, not the zoning restriction itself.

## SECOND STEP – IS IT A USE OR AREA VARIANCE?

- Maryland courts recognize two types of variances that require different standards of proof.
  - A "use variance" generally permits a land use other than the uses permitted in the particular zoning ordinance.
  - An "area variance" generally excepts an applicant from area, height, density, setback, or sideline restrictions.
- Because changes to the character of the neighborhood are considered less drastic with area variances than with use variances, the less stringent "practical difficulties" standard applies to area variances, while the "undue hardship" or "unnecessary hardship" standard applies to use variances.

# THE 'UNDUE HARSHIP' OR 'UNNECESSARY HARSHIP' STANDARD

- If the application involves a “use variance”, the “unnecessary or undue hardship” standard will apply.
  - The criterion for determining unnecessary hardship is whether the applicable zoning restriction, when applied to the property in the setting of its environment and due to its uniqueness, is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private property ownership.
  - The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner
  - Stated another way, the Code provision must have a disproportionate impact on the property due to its uniqueness.

## THE 'PRACTICAL DIFFICULTIES' STANDARD

- If the variance involves an area variance the “practical difficulties” standard applies.
  - Although similar to the “unnecessary hardship” standard, Maryland courts generally apply the less restrictive “practical difficulties” standard because use variances are viewed as more drastic departures from zoning requirements than area variances.
  - The standard requires a balancing of interests of the property owner’s need, consistency with the Comprehensive Plan, and negative impacts on the public interest and/or impact on adjoining landowners.

# STANDARD FOR GRANTING SPECIAL EXCEPTIONS

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- In contrast to variances, a different standard applies to special exceptions/conditional uses.
  - The terms "special exception" and "conditional use" are essentially interchangeable in Maryland law.
  - A special exception is defined as a grant of a specific use that must be based on a finding that the requirements of the zoning law governing the special exception on the subject property are satisfied.
  - The key distinction is that special exceptions enjoy a legislative presumption of validity. Because special exceptions are legislatively created within the comprehensive zoning regulatory scheme, they are presumed to be in the interest of the general welfare and are valid.

# STANDARD FOR SPECIAL EXCEPTIONS

- Once an applicant demonstrates compliance with the prescribed standards and requirements, the presumption that the use is in the general welfare can only be overcome by probative evidence of unique adverse effects.
- Importantly, the issue is not whether the special exception is compatible with permitted uses generally, as the legislative body has already deemed it compatible by designating it as a special exception; rather, the question is whether the adverse effects in the particular location would be greater than the adverse effects ordinarily associated with that use.

# ADMINISTRATIVE APPEALS TO BOA

# STANDARD OF REVIEW IN APPEALS TO BOARD OF APPEALS

- In Maryland, local zoning boards of appeals apply different standards of review depending on whether they are reviewing administrative decisions *de novo* or on the record.
- When a board of appeals conducts a *de novo* hearing on an administrative decision, it exercises all the powers of the original administrative officer and is not bound by the prior determination.
- However, when reviewing decisions on the record from hearing officers or administrative law judges, boards apply a deferential standard examining whether the decision exceeded statutory authority, was contrary to law, or lacked substantial evidence support.

# HEARING EXAMINER



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- **When a Hearing Examiner Should Be Appointed**
- The Chair of the Board of Appeals or a majority Board may vote to determine it is appropriate to use a Hearing Examiner when:
  - the zoning or land-use case is complex.
  - there is significant public opposition.
  - the issue is novel or a matter of first impression.
  - the property or development involved is large or uniquely located.

# RESPONSIBILITIES OF HEARING EXAMINER

- Serves as an independent contractor engaged by the Board to preside over contested zoning and land-use cases.
- Must be an attorney admitted to practice law in Maryland with knowledge of administrative, zoning, and land-use law and procedures.
- Participates in hearings in lieu of Board when appointed.
- Explains procedural rules, legal standards, and burdens of proof.
- Examines and cross-examines witnesses.
- Rules on offers of proof and determines admissibility of evidence.
- Prepares a written recommendation with findings of fact and conclusions of law within 45 days after record closure.
- Presents the written recommendation to the Board at an open meeting.

# CONCLUSION

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- The Planning Commission and Board of Appeals each have different roles and responsibilities in the land use review and approval process.
- By ensuring that established rules and procedures and legal standards are followed, a proper factual record can be made, and rational and supportable conclusions can be reached.
- This preserves the due process requirements which the legal structure is meant to satisfy and makes it more likely that the Board of Appeals and Planning Commission decisions will be upheld if appealed.

# REFERENCES

# CITY CODE PROVISIONS

Chapter 25, Articles IV and V - Boards and Commissions

Chapter 155 - Site Plans

155-12 – impacts on adjacent properties

155-14 – demonstrates APFO to DPW

155-15 -- site access/parking/circulation

155-16 – Architectural standards

155-17 – Compliance with signage plan

155-18 – stormwater compliance per DPW

Chapter 173 - Subdivision Plans

Chapter 205 - Zoning Code

155-17 – Compliance with signage plan

Variances (specific provisions): 122-7 (parking), 102-16 (landscape plan)

PC and BOA Rules and Procedures

