

CITY OF CUMBERLAND, MARYLAND

MUNICIPAL ZONING BOARD OF APPEALS BYLAWS

ARTICLE I PREAMBLE

Section 1.1. Creation. A Municipal Zoning Board of Appeals for the City of Cumberland shall be hereby established in accordance with Article 66B, Section 4.07 of the Maryland Annotated Code, as amended, and vested with all of the powers and duties thereby conferred by Article 66B and the Cumberland Zoning Ordinance.

Section 1.2. Short title. The City of Cumberland Municipal Zoning Board of Appeals also shall be known and referred to as the **Cumberland Board of Appeals**.

Section 1.3. Composition. The Board of Appeals shall be comprised of five (5) voting members, appointed by the Mayor and confirmed by the City Council. All regular members of the Board of Appeals shall be residents of the City of Cumberland. The local legislative body may not serve as the Board of Appeals.

Section 1.4. Term of membership. In accordance with Article 66B, Section 4.07 (a) (3) of the Maryland Annotated Code, as amended, the term of each member shall be three (3) years. All member terms shall be staggered such that no more than two (2) members' terms will expire within the same year.

Section 1.5. Removal from membership. In accordance with Article 66B, Section 4.07 (a) (5) of the Maryland Annotated Code, as amended, members of the Board of Appeals may, after a public hearing, be removed by the Mayor and Council for cause or on written charges. Once a decision to remove a member has been made, the Mayor and City Council, shall file a written statement of the reasons for said removal, which shall be made a part of the official minutes of the meeting.

Section 1.6. Vacancies. Vacancies occurring other than through the expiration of term shall be filled for the unexpired term by the appointing authority specified in Article I, Section 1.3 of these Bylaws.

Section 1.7. Alternate Members. In accordance with Article 66B, Section 4.07 (b) (1) of the Maryland Annotated Code, as amended, the Mayor and Council, shall appoint one (1) alternate member of the Board of Appeals, who may sit on the Board in the absence of any regular member. The alternate member shall be a resident of the City of Cumberland. When the alternate member is unable to attend meetings for an extended period of time, the Mayor and Council may designate a temporary alternate to sit on the Board.

Section 1.8. Conflicts of Interest. In accordance with Article 66B, Section 4.07 (a) (9) of the Maryland Annotated Code, as amended, any member of the Board of Appeals who may have a conflict of interest or the appearance of a conflict of interest with regards to a matter before the Board shall recuse him/herself from participating in the matter. If there is any question as to whether a member has a real or perceived

conflict of interest, the remaining members of the Board may, by affirmative vote, decide whether or not the member in question may participate in the matter.

Section 1.9. Duties and Responsibilities of the Board of Appeals. The Board of Appeals shall exercise all of the powers and duties specified in Article 66B, Section 4.07 (d) of the Maryland Annotated Code, as amended, which shall be exercised in accordance with the specific terms, conditions, and procedures specified for each duty in Section 7 of the City of Cumberland Zoning Ordinance, as amended. The specific responsibilities of the Board shall be to:

- a. Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of the Cumberland Zoning Ordinance or any Ordinance adopted under the authority of Article 66B;
- b. Hear and decide special exceptions (conditional uses) to the terms of the Cumberland Zoning Ordinance, and
- c. Authorize on appeal in specific cases a variance from the terms of the Cumberland Zoning Ordinance.

Section 1.10. Consistency with Article 66B. Whenever a conflict or discrepancy is determined to exist between the wording in these Bylaws and the applicable governing Section of Article 66B of the Maryland Annotated Code, as may be amended, is found to exist, then the effective provisions of the Maryland Annotated Code shall govern and supersede the specific wording of these Bylaws, until such time as the conflict or discrepancy is eliminated. Where such conflicts are discovered to exist, the Board of Appeals shall proceed to update and amend the Bylaws to eliminate said conflict or discrepancy at its earliest convenience.

ARTICLE II OFFICERS

The officers of the Board of Appeals shall consist of a Chairman, a Vice-Chairman, and a Secretary. All officers shall be members of the Board of Appeals.

Section 2.1. Chairman. The Chairman shall preside at all meetings of the Board of Appeals and at other meetings and public hearings called by the Board of Appeals.

- a. The Chairman shall decide all points of order or procedure and perform any duties required by law, ordinances, these rules, or the Board of Appeals.
- b. The Chairman shall call meetings of the Board of Appeals when required and shall sign reports, orders, and recommendations of the Board of Appeals, and, in general, shall act as spokesman for the Board of Appeals.
- c. The Chairman shall be one of the five (5) appointed voting members of the Board of Appeals. The Chairman shall have the privilege of discussing all matters before the Board of Appeals, but

shall vote only when necessary to break a tie-vote or when a vote of all members is required by these Bylaws or Article 66B of the Maryland Annotated Code.

- d. The Chairman may, at his/her discretion, establish any special committee consisting of members of the Board of Appeals and (if deemed necessary) City support staff to fulfill a responsibility or charge of the Board of Appeals.
- e. The Chairman may administer oaths and compel the attendance of witnesses.

Section 2.2. Vice-Chairman. The Vice-Chairman shall serve as Chairman in the absence or the disability of the Chairman and shall exercise all of the duties of the Chairman when acting in his/her capacity. In the event of the death, removal, or resignation of the Chairman, the Vice-Chairman shall perform the Chairman's duties until such time as the Board of Appeals shall elect a new Chairman and/or Vice-Chairman, as the case may be.

Section 2.3. Secretary. The Board of Appeals shall designate one of its members to act as Secretary of the Board.

- a. The Secretary shall assist the Chairman in the preparation of an agenda for Board of Appeals meetings, shall prepare and send out notices for regular and special meetings, shall prepare and distribute minutes of Board meetings, and shall establish and maintain the Board of Appeals' files.
- b. The Secretary shall also arrange for proper and legal notice of public hearings, attend to correspondence of the Board of Appeals, and shall carry out such other duties as are normally the responsibility of a Secretary.
- c. The Secretary may direct the services of the City Planner or his/her designee to perform the routine administrative responsibilities of the Secretary's office.

ARTICLE III ELECTION OF OFFICERS

Annually, at a regular meeting of the Board of Appeals held in the month of January, the Board shall elect a Chairman, a Vice-Chairman and a Secretary. The officers may succeed themselves. However, the maximum number of consecutive terms that may be served by an officer shall not exceed two for the Chairman or Vice-Chairman or three for the Secretary.

Section 3.1. Nomination of officers. Nomination of officers shall be made from the floor, and the election shall follow immediately thereafter.

Section 3.2. Election vote. A candidate receiving a majority vote of the entire membership (including the sitting Chairman) of the Board of Appeals shall be declared elected and shall serve for one year or until a successor shall take office.

Section 3.3. Vacancies. Vacancies in offices shall be filled immediately by the regular election procedures specified in this Article.

ARTICLE IV MEETINGS

Section 4.1. Regular meetings. Regular meetings of the Board of Appeals shall be scheduled at **4:00 p.m. on the first and third Wednesday of each month in the Mayor and Council Chambers on the second floor of City Hall in Cumberland.** If a regular meeting date falls on a Holiday observed by the City, the regular meeting may be rescheduled to a another date and time as may be determined by the Board. A regular meeting may be canceled due to a lack of substantive agenda items to be addressed, meeting location scheduling conflicts, emergency conditions, inclement weather, or other acts of nature beyond the City's control. In the event that a scheduled meeting is canceled, the Chairman may schedule a special meeting following the procedures specified in Section 4.6 of these Bylaws or the items scheduled to be conducted at the canceled meeting shall be deferred until the next regular meeting.

Section 4.2. Attendance. Each member of the Board is obligated to attend every meeting. At the request of a member of the Board of Appeals, the Chairman may make provisions for not more than one (1) member of the Board to **participate in a meeting via a conference call or other telecommunication device.** Attendance via teleconference shall not be considered an absence, and the participating member shall be considered part of the quorum for the matter at hand. However, any subsequent consecutive request for meeting participation by telecommunication shall be counted as an "absence" solely for determining meeting attendance and participation under this Section. Should any voting or alternate member appointed by the Mayor and Council **fail to attend three or more consecutive meetings** without cause acceptable to the Board of Appeals, the membership of the Board of Appeals may, by majority vote, petition the Mayor and Council to appoint a replacement, for cause. Once the Board of Appeals has petitioned the Mayor and Council for removal of a voting or alternate member, the Mayor and Council shall consider the petition in accordance with the procedures specified in Section 1.5 of these Bylaws.

Section 4.3. Quorum. A quorum necessary for the transaction of business shall consist of three (3) voting members of the Board of Appeals (including the Chairman, even though he/she will vote only in the event of a tie). Unless specifically provided otherwise by Maryland Law, ordinance, or these Bylaws, the business of the Board of Appeals shall be transacted by a majority vote of members present, after a quorum has been established. Members abstaining from voting on a motion before the Board of Appeals shall be counted in the determination of a quorum, but shall not be counted as a vote in favor of or in opposition on the specific motion at hand.

Section 4.4. Actions (voting) by the Board of Appeals. An official action or decision by the Board of Appeals shall require an affirmative majority vote of the members present, as specified above in Section 4.3 of these Bylaws. The Chairman shall request a **roll call vote** on any motion to determine an accurate accounting of the votes and the vote of each member on the motion shall be recorded in the official minutes of the meeting. Each action by the Board of Appeals shall be **initiated by a motion**, followed by a second of the motion by different voting members of the Board. Discussion of the motion shall be undertaken only after it has been seconded. If a motion fails to receive a second upon the call of the Chairman, the motion shall be rejected without a vote. **A motion may be revised during** the discussion

session and prior to the official vote only with the consent of both the member who made the motion and the member who seconded it. A voting member of the Board of Appeals also may move for an **amendment to the original motion** during the discussion session, which must receive a second by another voting member prior to discussion and action by the Board of Appeals. When a motion has been amended in this manner, the Board of Appeals shall first vote on the amendment or amendments in reverse order of motion, prior to voting on the original motion. No motions shall be made to take **final action on an issue subject to a public hearing** *until after* the hearing has been closed by the Chairman *and* any extended open record approved by the Board of Appeals during the open public hearing has expired. Voting procedures and issues not otherwise addressed in this section shall be governed by **Robert's Rules Of Order**.

Section 4.5. Order of business. The order of business at regular meetings shall be:

1. call to order and roll call,
2. chairman's comments (or announcements),
3. reading and approval of minutes of previous meeting(s),
4. public hearings (continued hearings shall be conducted first),
5. discussion items (discussions continued from previous meetings shall be conducted first),
6. briefings (including Committee reports and special presentations),
7. City Planner's report
8. communications and miscellaneous new business, and
9. adjournment.

Section 4.6. Special meetings. Special meetings of the Board of Appeals shall be held upon call of the Chairman, and at such other times as the Board of Appeals may determine by majority vote, provided that at least five (5) days advance notice is given in writing (which shall include e-mail) to each member. The Board of Appeals may, by majority vote conducted at a regular meeting, establish a special meeting date, time, and location that will require no advance written notice to the members of the Board of Appeals. No formal vote or public hearing shall be conducted at a special meeting which has not been subject to the public notification procedures specified in Section 4.8 of these Bylaws.

Section 4.7. Open to the public. All meetings and hearings of the Board of Appeals (with the sole exception of an Executive Session) shall be open to the public. All Executive Sessions shall be conducted in accordance with the Maryland Open Meetings Act (Maryland Annotated Code, State Government Article, Title 10 Subtitle 5, as amended).

Section 4.8. Notification. Public notice of all **meetings** of the Board of Appeals shall be provided through the posting of a notice in a public place within Cumberland City Hall at least five (5) days prior to the scheduled date of the meeting. Such notice shall state the date, time, and location of the meeting and the actions to be taken by the Board of Appeals. Public notices for all **public hearings** before the Board of Appeals shall be provided in the form and manner prescribed by the applicable governing statute or local code and shall be in addition to the public notice for the regular meeting at which the hearing(s) will be conducted. If no specific public notification procedures are prescribed for a matter that that Board of Appeals determines to conduct a public hearing, then the hearing shall be notified by the one-time publication of a legal ad in a newspaper of local circulation within the City not less than fifteen (15) nor

more than thirty (30) days prior to the date of the hearing. Such legal ad shall specify the time, date, and location of the meeting and provide a general description of the matter to be heard.

Section 4.9. Special rules for Public Hearings. All persons wishing to testify at a public hearing before the Board of Appeals shall place their names on an **attendance list** provided by the City at the hearing site, which shall be maintained as part of the official record of the hearing. **Oral public testimonies** shall not be received *before* the public hearing has been opened by the Chairman or *after* the Chairman has closed the public hearing. The Chairman may require and **administer oaths** for any and all testimonies at a public hearing. The Chairman also may, at his/her discretion, establish **time limitations on personal comments** and such other special rules on public conduct as may be necessary to ensure adequate opportunity for complete and balanced public input on issues before the Board of Appeals. Time limitations on individual testimonies may be imposed when the total number of persons wishing to speak exceeds ten (10) and may be restricted to three (3) or five (5) minutes, at the Chairman's discretion, depending upon the total number of potential testimonies. Whenever a time limit for oral testimonies at a public hearing is established by the Chairman, then the Board of Appeals shall provide an **extended open record** for written comments prior to closing the hearing and participants at the hearing shall be informed at the hearing of their opportunity to submit written comments to the record in addition to or in lieu of their oral testimonies at the hearing. An extended open record for written comments shall be an *option* for the Board of Appeals at any public hearing where no time limits on oral testimonies are needed. Any extended open record shall be established by the Board of Appeals prior to the close of the hearing, along with a time-and date-specific deadline for the receipt of written comments and directions on where and how (e-mail, parcel post, and/or hand-delivery) they may be submitted. The Chairman also may, at his/her discretion and after providing a verbal warning, **request the removal of any citizen** who repeatedly disrupts the proceeding by interrupting speakers who have the floor (speaking out of turn), makes offensive remarks (such as insults, catcalls, or actively incites support or opposition from other citizens at the hearing), or acts in a hostile, combative, confrontational, or potentially threatening manner.

ARTICLE V RECORDS

Section 5.1. Duty of the Secretary. The Secretary shall take or arrange for the taking of minutes covering the proceedings of each meeting of the Board of Appeals, documenting the actual vote on each question.

Section 5.2. Official minutes. The minutes of a Board of Appeals meeting shall not become an official record of the Board of Appeals until they have been adopted by majority vote of the Board of Appeals. The official minutes and all records of the Board of Appeals shall constitute public records, and the Board of Appeals shall arrange with the Mayor and City Council to provide for the safe keeping of those records.

Section 5.3. Permanent files. In addition to the minutes of the Board of Appeals, the Secretary shall keep a permanent file of all official minutes, plats, maps, charts, reports, notices, resolutions, correspondence and applications filed with and issued by the Board of Appeals.

**ARTICLE VI
EMPLOYEES, CONTRACTS, AND FINANCES**

Section 6.1. Employees of the Board of Appeals. The Board of Appeals may request the Mayor and Council to designate municipal employees to assist in the work of the Board of Appeals; and the Board of Appeals may also recommend that the City contract with consulting and regional planners, engineers, architects and other professionals for such services as may be required.

Section 6.2. Expenditures. The expenditures of the Board of Appeals shall be within the amounts appropriated for the purpose by the Mayor and Council.

Section 6.3. Custody of funds. The Secretary shall take custody of any and all funds coming into the possession of the Board of Appeals, shall deposit those funds in a manner approved by the Board of Appeals, and shall establish and maintain the Board of Appeals's books of account. Under the Board of Appeals's direction and upon its authorization, the Secretary shall sign all orders, invoices, and purchase orders for the payment of money and shall pay out and disburse Board funds.

**ARTICLE VII
COMMUNICATIONS WITH THE PUBLIC**

Until such time as the Board of Appeals has adopted official minutes of a meeting, the Chairman shall serve as the **official and exclusive spokesperson for all communications** with the public and the media regarding the actions taken at a meeting. If a meeting was chaired by the Vice-Chairman, then the Vice-Chairman shall serve as the official and exclusive spokesperson for all communications with the public and the media regarding the actions taken at the meeting, until such time as the Board of Appeals has adopted official minutes for said meeting. The Chairman or Vice-Chairman, serving in this capacity, may (at his/her discretion) refer or defer specific questions or inquiries from the public or media regarding meeting issues to the City's Attorney or the City Planner, in accordance with applicable City policies and procedures. All **official written letters and recommendations** from the Board of Appeals (representing the Board of Appeals as a body) shall be issued only after approval of the Board of Appeals.

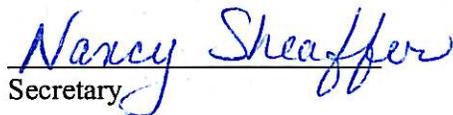
**ARTICLE VIII
AMENDMENTS TO THE BYLAWS**

The Board of Appeals may from time to time amend any part or parts of these rules and regulations so long as such amendments are in accordance with the laws of the State and ordinances of the City of Cumberland; such amendments shall require the affirmative majority vote of Board of Appeals members present.

Adopted this 16th day of July, 2008 by an affirmative vote of 3 to 0, with
1 members abstaining or absent.


Chairman

ATTEST:


Secretary