

**Town of Highland Beach Board of Appeals**  
**Rules of Procedure**

**Section 1. Establishment and Organization**

1.1 Establishment of Board

In order that the objectives of the Town's zoning code may be more fully and equitably achieved and implemented, and a means for interpretation provided, the Board of Commissioners has established a Board of Appeals for the Town of Highland Beach Maryland. The Board of Commissioners also has vested in the Board of Appeals the responsibility to hear and decide appeals by persons aggrieved by certain administrative or adjudicatory orders or determinations by Town officials.

1.2 Purpose and Scope of Rules

These rules of procedure are intended to govern the operations and proceedings of the Board, and to supplement and implement provisions of the Highland Beach Charter and Zoning Ordinance and State law relating to the Board.

1.3 Organization

- 1.3.1 There shall be a Chairman of the Board. The Chairman shall be elected from among the members of the Board by a majority vote of all current members. The term of the Chairman shall be one year, and the Chairman may be reelected for successive terms.
- 1.3.2 The Chairman may appoint committees from among the members. The Chairman also may create one or more subordinate offices, including a Vice-Chairman, and shall fill such offices from among the members of the Board.
- 1.3.3 The Executive Secretary to the Board shall serve under the direction of the Chairman.
- 1.3.4 The Chairman shall preside at all meetings of the Board, conduct all hearings before the Board, decide all points of order, unless otherwise directed by a majority of Board in session at the time, and administer or delegate to another member the administration of all oaths.

- 1.3.5 In the absence of the Chairman and unless the Chairman previously has designated a Vice-Chairman, *a* senior member of the Board shall preside and execute the functions of the office of the Chairman until the Chairman returns.
- 1.3.6 The Chairman shall provide for the preparation of all resolutions and decisions of the Board.
- 1.3.7 The *Town Clerk* shall provide the Board with such ordinances, plats, applications and information that may be requested by the Chairman.
- 1.3.8 Subject to these rules and the direction of the Chairman, *and except for formal hearings of the Board, the Town Clerk* shall keep minutes of the meetings and proceedings of the Board, shall keep records of its examinations and other official actions, shall give notices and conduct the official correspondence of the Boards, and shall compile and maintain the necessary records and files of the Board. *For formal hearings of the Board, a court stenographer will be employed to prepare a formal record of hearing. In the event of a request for judicial review of a decision of the Board, the party seeking judicial review shall be responsible for ordering and paying for a transcript of the hearing proceedings, including copies for the Board and the Court.*
- 1.3.9 During any period of absence of the Executive Secretary, the Chairman shall request the Mayor to arrange for a replacement to perform the duties of the Executive Secretary.
- 1.3.10 All documents and communications addressed to or required to be filed with the Board, shall be filed with the Town Clerk in the Town Hall.
- 1.3.11 The alternate member of the Board shall sit as a member, and have all rights and privileges of a member, at any meeting of the Board from which a regular member is absent. The alternate member of the Board also may sit as a member, and have all rights and privileges of a member, in connection with any matter in which another member of the Board is prohibited from participating or elects not to participate because of a conflict of interest. The minutes of the proceedings of the Board shall reflect when the alternate member of the Board is sitting as a member.
- 1.3.12 The attorney to the Board shall review all resolutions and orders of the Board in connection with any application, appeal or other

adjudicatory matter prior to action being taken by the Board on such resolution or order.

## **Section 2. Meetings and Hearings**

- 2.1 As used in this Section, “meeting” includes a public hearing.
- 2.2 All meetings of the Board of Appeals shall be held in the Town Hall unless it be otherwise provided for a specific meeting.
- 2.3 No regular meetings of the Board are required. Meetings of the Board shall be called from time to time by the Chairman, by two members of the Board, or by the Executive Secretary, provided not less than forty-eight (48) hours notice is ~~mailed~~ provided to each member and the Executive Secretary.
- 2.4 Unless some other method is required by law, public notice of all meetings of the Board shall be given by posting a notice of the date, time and place of each meeting on the bulletin board outside of Town Hall. The notice shall be posted promptly by the *Town Clerk* upon the scheduling of the meeting. At least once each year the *Town Clerk* shall cause to be published in a newspaper of general circulation in the Town a notice that public notice of meetings of the Board is given in the manner specified in this rule.
- 2.5 All public hearings to be conducted by the Board shall be scheduled by the *Board Chairman*, conforming with all requirements of law.
- 2.6 All meetings of the Board shall be open to the public, except as all or part of a meeting may be closed in accordance with the Maryland Open Meetings Act. Notwithstanding the foregoing, all votes on all issues must be taken in a session open to the public.
- 2.7 A quorum for the transaction of business at any meeting of the Board shall consist of *three* members. The affirmative vote of not less than a majority of the members of the Board present shall be necessary to approve any matter or take any action requiring a vote of the Board. Where the matter or action involves a decision of the Board upon an application, appeal or other adjudicatory matter, ~~the~~ matter or action must be approved by the affirmative vote of not less than a majority of the members who participated in the proceedings. Any matter or action not decided by the affirmative vote of at least the required majority of members of the Board is defeated.
- 2.8 A member may not participate in any matter before the Board in which the member has a conflict of interest as defined in the Highland Beach Ethics Ordinance. A member also may elect not to participate in a matter in which the member believes there may be a conflict of interest or an appearance of a

conflict of interest, even though the conflict may not be expressly defined by the *Highland Beach* Ethics Ordinance, in which the member has a bias, or for other good cause.

2.9 No member or anyone in attendance shall proceed to debate, discuss an issue, put a motion, or offer a resolution until he shall have addressed the Chairman and shall have been recognized by him. While the Chairman is putting a question into a motion or a resolution, or a vote is progressing, no member shall interrupt or leave his seat.

2.10 The vote of each member of the Board on each question shall be recorded. The minutes of the proceedings of the Board shall show the vote of each member upon each question, or, if absent or failing to vote, indication such fact.

2.11 All actions or decisions of the Board, except such actions as involve administrative matters affecting the internal operations of the Board and except for such matters as these rules permit to be undertaken in some other form, shall be taken by written resolution. Each resolution which decides an application appeal or other adjudicatory matter shall contain a statement of the grounds forming the basis of such decision. The Chairman shall notify the Board of Commissioners, and the Planning and Zoning Commission of all decisions and resolutions.

2.12 Unless changed by a motion approved by not less than a majority of the members of the Board present, the order of business at each meeting of the Board shall be as follows:

- a) Call to Order
- b) Roll Call
- c) Approval of the minutes of the previous meeting
- d) Communications
- e) Reports of members, committees, and Executive Secretary
- f) Call of the Calendar
- g) Hearings
- h) Action on pending applications, appeals and other adjudicatory matters
- i) Report of Unfinished Business
- j) Report on New Business
- k) Adjournment

2.13 Every person at any meeting of the Board shall abide by the order and direction of the Chairman. Discourtesy or disorderly and contemptuous conduct shall be regarded as a breach of the privileges of the Board, and shall be dealt with as the Chairman deems proper.

### **Section 3. Commencement and Docketing of Actions**

- 3.1 All applications, appeals and other adjudicatory matters authorized to be brought before the Board shall be initiated by filing an application with the Board in such form as the Board may prescribe. An application for appeal shall be filed within 30 days from the decision appealed from unless a different time is specified by law. An application for appeal shall be filed at the same time with the Town officer from whom the appeal is taken. Any other application may be filed at any time unless otherwise restricted by law. Each application shall be accompanied by such fee as is prescribed by the Board of Commissioners. An application shall not be deemed complete unless it is in proper form in all respects and accompanied by the required fee. The determination whether an application is complete shall be made initially by the Executive Secretary after receipt of the application, and any application not complete shall be rejected. Notwithstanding that the Executive Secretary may have accepted an application, the Board, by motion approved by unanimous vote at the Board's first meeting after the filing of the application, may determine that the application is not complete and reject the application.
- 3.2 Each application shall contain at least the following information:
  - 3.2.1 Name of the applicant
  - 3.2.2 Location of the subject property (if applicable)
  - 3.2.3 A statement of the relief requested from the Board
  - 3.2.4 A general statement of the basis for the application or appeal
  - 3.2.5 Names and addresses of all persons to whom notice must be sent by these rules or otherwise by law, a map showing the location of the subject property and all properties on account of which such notices must be sent, and pre-addressed and postage paid (with sufficient postage for first class mail delivery) No. 10 envelopes for all person to whom notice must be sent.
  - 3.2.6 A copy of any order or decision form which the appeal is taken or upon which the application is based.
- 3.3 Each completed application to be considered by the Board shall be numbered serially and calendared by the Executive Secretary. The calendar numbers shall begin anew on January 1 of each year and shall be hyphenated with the number of the year in which said application is filed.
- 3.4 Applications will be assigned from hearing in the order in which they appear on the calendar, except that an application may be advanced out of order for hearing by the Executive Secretary, or by order of the Board, upon good cause being shown.

3.5 Upon filing with the Board of Appeals of a completed application, the Board Chairman shall fix a reasonable time (not more than 60 days from the filing date) for a hearing on the application, subject to the following procedures.

3.5.1 Within 10 days of the filing date of an application in connection with a zoning matter, and prior to fixing a date for the hearing, the Executive Secretary, *with such administrative assistance by the Town Clerk that may be deemed necessary*, shall transmit a copy of such application and all accompanying information and plans to the Planning and Zoning Commission. Where a Planning and Zoning Commission recommendation is required by the Town's zoning code in connection with a pending application, appeal or other adjudicatory matter, the Board of Appeals shall be guided in fixing a date for a public hearing by the advice of the Chairman of the Planning and Zoning Commission as to the Commission's time required to evaluate the application.

3.5.2 In any case involving a zoning matter, and in other cases as may be required by law, at least 15 days prior to the date fixed for hearing, or at such other time as may be required by law, the *Town Clerk* shall publish a notice containing the name of the applicant or appellant; an identification of the real property in question (if applicable); the date, time and place of the hearing; a brief statement of the special exception, variance, error alleged, or other question which is subject to determination by the Board, and such other information as may be required by law, in at least one newspaper of general circulation in the Town.

3.5.3 For applications involving a zoning matter, the *Town Clerk* shall cause to be posted in a conspicuous place on the property involved, and clearly visible from an adjoining public right-of-way, a notice of pending action, containing the same information as in paragraph 3.5.2, at least 15 days prior to the date fixed for the public hearing.

#### **Section 4. Prehearing Procedure**

4.1 No pleadings shall be required of any party to a proceeding before the Board other than the application. However, if any other pleadings or papers are filed, copies shall be served on the parties or their attorney of record before the Board, and a certificate of service shall be affixed thereto.

4.2 An application or appeal may be withdrawn at any time if all other parties to the proceeding consent, or if granted permission to withdraw by the Board upon good cause shown.

- 4.3 Any party to a proceeding before the Board may request a postponement of a scheduled hearing if a written request is received by the Board not less than 30 days before the hearing. A request for postponement received by the Board less than 30 days before a scheduled hearing may not be granted except for good cause shown.
- 4.4 A request for postponement shall be in writing, stating in detail the reasons for the requested postponement. The request shall contain a statement that the party making the request agrees to pay any additional expenses incurred if the postponement is granted, including readvertising and renotification, reposting of the property, and other reasonable administrative costs as may be assessed by the Board. Copies of all requests shall be mailed to all parties and attorneys of record. All requests for postponement shall be decided by the Board.
- 4.5 There shall be no prehearing procedure before the Board except as follows:
- 4.5.1 Motion to determine standing
  - 4.5.2 Motion to dismiss for lack of jurisdiction
  - 4.5.3 Request for postponement
- 4.6 No party, and no attorney, spokesman or representative of a party, shall communicate ex parte or confer privately with any member of the Board concerning any application or appeal pending before the Board.
- 4.7 There shall be no depositions or discovery.

## **Section 5. Conduct of Hearings**

- 5.1 Procedure for hearings before the Board shall be as follows:
- 5.1.1 Opening Statement by Chairman
    - a) Description and purpose of hearing
    - b) Procedure to be followed
    - c) Parties of interest in cases on calendar present?
    - d) Introduction of the Board Members
  - 5.1.2 The Hearing
    - a) Call to Order
    - b) All Board Members and the Executive Secretary present?
    - c) Parties of Interest in Docket present?
    - d) Presentation of proof of compliance with all posting, publication and other hearing notice requirements.
    - e) Presentation of Applicant's case by the Applicant

- f) Questions by Board Members
- g) Presentation of Appellant's case by the Appellant (for appeal)
- h) Questions by Board Members
- i) Report of the Town Planning Commission, if applicable
- j) Questions by Board Members
- k) Any other presentation on behalf of Town
- l) Questions by Board Members
- m) Testimony supporting Applicant's position
- n) Questions by Board Members
- o) Testimony opposing Applicant's position
- p) Questions by Board Members
- q) Closing Statement by Applicant
- Closing Statement by Appellant (for appeal)

5.1.3 Close the Hearing

5.1.4 Board Deliberations

5.2 All testimony at any hearing or proceeding involving an application, appeal or other adjudicatory matter shall be under oath. The oath shall be administered by the Chairman or by such person as the Chairman shall designate.

5.3 The oath to be used at all hearings conducted by the Board shall be as follows:

“(name), do you solemnly affirm that the testimony you are about to give is the truth to the best of your knowledge?”

The Witness shall reply, “Yes” or “I do” before proceeding to give testimony, opinions, or answer questions allowed by the Chairman.

5.4 The Chairman shall regulate the course and conduct of any hearing and shall rule upon any procedural matters and objections made during the course of the hearing.

5.5 The Board, upon motion unanimously approved, may impose reasonable limits upon the length of testimony presented at any hearing before the Board.

5.6 The parties and any other person who would be aggrieved in a manner differently than the public at large by a decision of the Board on an application, appeal or other adjudicatory matter, upon request, may cross-examine any witness testifying at the hearing to the matter. Any right of cross-examination not asserted in a timely manner is waived.

- 5.7 At any hearing the Chairman may admit evidence which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. The Chairman shall give affect to the rules of privilege recognized by law. The Chairman may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.
- 5.8 The Board shall provide for a *stenographic* record of all proceedings on all applications, appeals and other adjudicatory matters before the Board. Any party desiring a transcript of all or part of the proceedings may obtain a copy upon payment of the full cost of preparation of the transcript.

## **Section 6. Rehearing**

- 6.1 No rehearing of any hearing shall be held except for good cause shown on written motion filed not more than thirty (30) days after the Board's decision on the application, appeal or other adjudicatory matter. The motion shall set forth the reasons for the request, shall be verified, and shall be accompanied by any pertinent documentation in support of the motion. The motion also shall contain a statement that the party making the request agrees to pay any additional expenses incurred if the rehearing is granted, including readvertising and renotification, reposting of the property, and other reasonable administrative costs as may be assessed by the Board. A copy of the motion shall be sent by the person requesting the rehearing to all parties at the previous hearing.
- 6.2 The Board may not grant a request for a rehearing unless the motion identifies in detail new evidence to be presented at the rehearing and explains why such evidence reasonably could not have been presented at the previous hearing.
- 6.3 The Board shall consider and act upon a request for rehearing without oral argument or hearing from any party. The Board may approve the request for a rehearing, subject to such conditions as the Board, by resolution in each case, may stipulate.
- 6.4 If the request for a rehearing is granted, the case shall be put on the calendar for a rehearing. All parties to the previous hearing shall be provided notice of the rehearing.

## **Section 7. Miscellaneous**

- 7.1 Adoption and amendments to these Rules of Procedure may be made by unanimous vote of those present at any meeting of the Board
- 7.2 The suspension of any rule of procedure may be ordered at any meeting by unanimous vote of those present.

