



THE
CITY OF BRUNSWICK
MARYLAND

1 WEST POTOMAC STREET · BRUNSWICK, MARYLAND 21716 · (301) 834-7500

**Board of Zoning Appeals
Agenda
August 31, 2023
6:00 PM**

Note:

This meeting has been re-scheduled from the normal 4th Thursday of the month to the last Thursday of the month at the request of the BOA Chairman as per BOA Bylaws and Procedures due to BOA member availability.

1. Minutes: July 27, 2023

Approval

3. Chair: Gary Williams

4. Old Business:

BR-BOA-23-01-SE – 401 E Potomac Street Special Exception

Resolution of Approval

For Signature

5. New Business: None

6. Board Matters: Review of Bylaws and Readoption with Signatures

7. Adjournment



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Board of Appeals Page 2 of 2 Notes Cont.

NOTES:

New cases will not be started after 10:30 PM unless approved by the Board. Any unfinished items will be heard in order at 6:00 PM on a date determined by the Board.

Applicant presentations will be limited to twenty (20) minutes. Public comments will be limited to four (4) minutes for individuals and ten (10) minutes for bonafide organizations. The Chair may extend these times upon good cause shown. Written comments will be accepted prior to and at the hearing. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

Applicants, Applicant's Representatives and Citizens; Please be prepared to speak within the time allotted by the Board of Appeals for the Agenda Item which you will be testifying on. All speakers will be asked to address the Board of Appeals from the podium when called upon.

Anyone presenting material (photographs, letters, graphs, charts, etc.) to the Board of Appeals at a meeting should provide a minimum of ten (10) copies for distribution to the members and staff.

Agenda Items will be reviewed in succession and it is the responsibility of the applicant and other persons of record to be prepared to discuss their agenda item during the respective session.

If Needed the Board will meet in Closed Session prior to the regular meeting to consult with the Board Counsel and selected Staff.

Board of Zoning Appeals

Bylaws & Procedures

I. MEMBERSHIP, POWERS AND DUTIES

The membership, powers and duties of the Board are as set forth in Article 66B of the Maryland Code and in the laws and ordinances of the City of Brunswick.

II. COMPOSITION OF MEMBERSHIP

- A. Number: The Board consists of three (3) members as provided by law. In addition, there is one (1) alternate member who is empowered to sit on the Board in the absence of any Member of the Board.
- B. Appointment: Members are appointed by the Mayor and Council of the City of Brunswick as provided by law.
- C. Term: The term of each Member is three (3) years, or as appointed by the Mayor and Council of the City of Brunswick as provided by law.
- D. Chair: The Board shall elect a chair from one of its members to serve a term of one (1) year. The chair shall preside at meetings of the Board and may call special meetings of the Board, may compel the attendance of witnesses through subpoena, and may grant restraining orders to stay actions that are under appeal. The chair shall sign all official documents pertaining to Board Records.
- E. Vice-Chair: The Board shall elect a vice-chair from one of its members to serve a term of one (1) year. The vice-chair shall preside over meetings in the absence of the chair and may call special meetings of the Board and may compel the attendance of witnesses through subpoena, and may grant restraining orders to stay actions that are under appeal when the chair is unable to do so and all duties required.
- F. Secretary: The Board shall elect a secretary from one of its members to serve a term of one (1) year. The Secretary shall prepare or have prepared written minutes of all meetings for approval by the Board and oversee the maintenance of the Board's Records.
- G. Alternate: The Alternate shall have all powers and duties of a regular Board member when sitting on a case.

III. FILING OF APPLICATIONS

- A. An official application, inclusive of all required documents, for a special exception, variance or administrative appeal may be filed at any time prior to 3:00 P.M. during normal business hours. All applications for a special exception or variance shall include plot plans and/or sketches and other information necessary for proper consideration of the application.
- B. Administrative appeals to the Board must be filed within twenty (20) days after the date of the administrative decision from which an appeal is taken. Time shall be computed from the date of the written notice of the decision. The Board, however, may decide, on a unanimous vote of the sitting members, to hear an administrative appeal filed after the expiration of the 20-day filing period if the Board determines that special conditions exist.

- C. If a grant of a special exception is denied or withdrawn with prejudice, no new application for the denied user on the same property shall be accepted for six (6) months after the decision denying or withdrawing the previous
- D. Any application for special exception withdrawn without prejudice or dismissed prior to hearing without prejudice may be re-filed pursuant to procedures set forth above.
- E. Applications for special exception seeking a different use with regard to property, which has been the subject of a previous application, may be submitted pursuant to procedures set forth above.
- F. All applications for special exceptions and variances must be made by a person with a financial, contractual or proprietary interest in the subject property. The Board may require proof of such interest. If there is a conflict in those interests, the person with controlling interest or legal right shall determine if an application is to be filed.

NOTE: Specific details on the filing of applications are delineated in the Board of Appeals filing procedures.

VI AGENDA/NOTICES

The agenda of applications and appeals to be heard shall be maintained by the Secretary or his/her designee and shall be available for public inspection during normal business hours.

V. HEARINGS AND MEETINGS

- A. Time and Place of Hearings: The Board holds regular hearings on the fourth Thursday of every month at ~~7:00 P.M.~~ **6:00 P.M.**, or at such other time as the Board may designate. Special meetings are held upon the call of the Chair. Dates of the public hearings shall be on the signs on the property, which is the subject of special exception, variance or claim of administrative error before the Board. Notices shall be sent by mail to the applicant and adjoining property owners as required by law and these rules.
- B. Quorum: A minimum of two members of the Board shall be required to conduct hearings or any business of the Board. The Chair shall have the right to make or second motions and may vote.
- C. Continuance of Hearing: Hearings may be continued from time to time, and time and place of the continued hearing shall be publicly announced at the time of the continuance. No further notice of such continued hearing shall be required; otherwise, notice thereof shall be given as in the case of the original hearing.
- D. Order of Business: Meetings of the Board may be conducted in the following manner:
 1. Approval of the minutes of previous meeting(s).
 2. Overview of the hearing procedures presented by the Chair.
 3. Old business.
 4. New business.
 5. Board matters.
 6. Adjournment.

E. Procedure: The hearing of cases shall be conducted in the following manner:

1. All persons wishing to offer testimony on the case should sign up prior to the case being called and shall be sworn in. Only sworn testimony will be considered.
2. Staff report and agency comments shall be presented and made a part of the record.
3. Applicant, appellant, or agent shall present the request to the Board.
4. Testimony in support of the application or appeal.
5. Testimony in opposition to the application or appeal.
6. Additional relevant testimony neither in support or opposition to the application or appeal.
7. Letters relevant to the case shall be noted for and made a part of the record.
8. Rebuttal testimony by the applicant, appellant or agent if opposition of testimony is presented.

In each case, the applicant or appellant shall have a twenty (20) minute presentation period. Groups recognized by the Chair shall have ten (10) minutes and individuals shall have four (4) minutes. The Chair may grant extensions of the time limits unless an objection is raised by a board member. Board members and the staff may question the presenter or witness at any time during the hearing; in addition, the Chair may direct a person to respond to a question of the Board. Cross-examination of witnesses as to relevant material is allowed, as required by law, with the Chair presiding.

The rules of evidence applicable to administrative hearings as set forth by the Court of Appeals of Maryland shall apply generally. The Board shall conduct hearings in a manner best calculated to afford all parties an opportunity to present their positions and to serve the ends of justice and fairness. The Board may make such rulings as may be necessary to conduct the hearing in an efficient and orderly manner including, but not limited to, imposing time limitations and excluding irrelevant or repetitive evidence. Appellants and applicants are bound by any legal proffers or evidence offered and adopted by the Board as a condition or reason of the Findings and Decision.

- F. Identification of Parties: All persons appearing to testify or submit evidence shall identify themselves on the sign-up sheet provided by staff and again at the podium by name, address and any person or entity they represent. Designated spokesperson for groups shall identify themselves as such as well.
- G. Determination By Vote at Hearing: Two votes are required to grant an application or an appeal. Failure to obtain two votes shall have the effect of a denial. The Board may impose conditions on a grant of a special exception or variance petition, as provided by law.
- H. Decision: The Board shall grant or deny each application or appeal in writing: Each grant or denial shall set forth a summary of facts found and reasons for the decision relevant to the pertinent criteria. The Secretary shall prepare or have prepared a written Resolution for each grant of a special exception, variance or administrative appeal. The decision does not become official and final until signed by all members of the Board who heard the case, usually at the regularly scheduled meeting the month following the hearing(s).

- I. Record: An electronic transcript (tape recording of the hearing) shall be kept by a recording device, and the audiotape shall be preserved as a public record for a period of three years. The recording may be transcribed stenographically or copied electronically by any interested person at his/her own expense by arrangement with and under the supervision of the Secretary of the Board or his/her designee. If there are discrepancies between recordings, the Board's recording is the official recording. The only official written transcript is that approved by the Secretary.
- J. Minutes: Written minutes, showing the disposition of all cases and showing the vote of each member upon the question, shall be approved by the Board, shall be signed by the Chair, and kept by the Secretary or Acting Secretary. The signed minutes shall be a public record available for inspection.
- K. **MEMBER ABSENCE: IF A BOARD MEMBER IS ABSENT FROM A SCHEDULED MEETING THE ALTERNATE SHALL SIT IN TO HEAR THE CASE AND VOTE IF NECESSARY. IF THE CASE IS CONTINUED THE ABSENT BOARD MEMBER SHALL REVIEW ALL RECORDS OF THE CASE PREVIOUSLY PRESENTED IN ADDITION TO ALL NEW TESTIMONY TO VOTE ON SAID CASE. THE BOARD MEMBER SHALL MAKE A STATEMENT ON THE RECORD AT THE BEGINNING OF HEARING TO HEAR THE CONTINUED CASE THAT HE/SHE HAS REVIEWED ALL THE PREVIOUS TESTIMONY AND WILL BE PARTICIPATING IN THE VOTE. THE CHAIR SHALL OFFER ON THE RECORD THE OPPORTUNITY FOR THE APPLICANT AND ANY WITNESSES (FOR OR AGAINST) TO OBJECT AND STATING THE REASON FOR THEIR OBJECTION. WITH NO MERITORIOUS OBJECTION FROM THE APPLICANT OR THE PUBLIC WHICH PREVIOUSLY TESTIFIED THE BOARD MEMBER SHALL VOTE ON THE CASE.**

VI. WITHDRAWAL OF APPLICATION

Applicants may withdraw an application at any time. If an applicant submits and then withdraws an application for appeal, the applicant shall be precluded from filing another application for substantially the same proposal concerning the same property for six (6) months from the date of withdrawal of the application.

VII. RECONSIDERATION

The Board may entertain a request for reconsideration of a decision.

- A. Parties with a financial, contractual, or proprietary interest, or who became a party of record at the initial hearing may request reconsideration. Such a request must be in writing, must be received within two weeks after the oral decision of the Board and must set forth the reasons for the request. The party requesting reconsideration shall also give a written notice to any person who is a party or who became a party in the matter at the public hearing. Verification of this notice being sent must be presented to the Board at the time of the written request. No action on any request will be taken except upon a motion by a Board member.
- B. A Board member (whether or not on the prevailing side of a question or at the initial hearing) may make a motion for reconsideration at any Board meeting prior to the final signing of the decision.

If the Board agrees to reconsider a decision and conduct a hearing, such hearing shall not be scheduled any sooner than the Board's next regular meeting, subject to the notice requirements. When a reconsideration hearing is scheduled, notice shall be given as in the case of the original

hearing, and shall include any persons who are parties or who became parties at the original hearing. No additional posting or fees will be required.

VIII. APPEALS TO THE COURTS

A final decision may be appealed to the Circuit Court as provided for in the State and City laws. Appeal times begin from the signed, written decision of the Board.

IX. CONDUCT OF BOARD MEMBERS.

- A. Speaking for the Board A member shall not appear to speak for the Board except as authorized by the Board. In any public or private statement concerning Board affairs, members will carefully indicate whether they are speaking for the Board or for themselves.
- B. Gratuities and Entertainment Members shall not accept gifts or compensation from any persons involved in matters which have come before the member while on the Board or in matters that it is reasonable to assume may come before the Board.
- C. Privileged Information Members shall not engage in any business transaction in regard to which they have an advantage because of information gained through membership on the Board.
- D. Conduct at Meetings Members shall conduct themselves at Board meetings in a fair, understanding and gracious manner. They shall seek to be considerate of all individuals, attitudes and differences of opinion involved in official Board business.

X. DEFINITIONS

- A. Definitions: The definitions found in Article 4 of the City of Brunswick Ordinance shall apply to these bylaws.

XI. RULES NOT JURISDICTIONAL

These rules of procedure do not constitute jurisdictional requirements. Failure of the Board, its staff, or any party to comply with any provisions of these rules of procedure shall not invalidate any otherwise valid decisions or action of the Board.

XII. These by-laws and procedures supercede all such pervious procedures. The Board may approve changes to these procedures at any regularly scheduled monthly meeting.

Adopted by the Board of Appeals this _____ day of _____, 2023.

Gary Williams, Chairman

Steve White, Vice Chairman

Walt Stall, Secretary

Eric Ahalt, Alternate Member



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Brunswick Board of Appeals Minutes July 27, 2023

Commission Members Present: Chair Gary Williams Vice-Chair Steve White, Secretary Walter Stull, and Alternate Eric Ahalt were present.

City Attorney: Not present.

Staff Present:

The Planning Director Bruce Dell and Principal Planners Heather Gottke & Brittany Crosten were present.

Chair: Gary Williams called the meeting to order at 6:00 p.m.

Minutes:

The minutes for the June 22, 2023, meeting were reviewed, one correction was noted. by motion from Mr. White and a second by Mr. Stull. The motion was approved 3-0-0.

Board Matters:

Chairman Gary Williams announced at the beginning of the hearing agenda that he has reviewed the record and will be participating and voting on the continued case. He offered on the record the opportunity for the applicant and any witnesses (for or against) to object and state the reason for their objection. There were no objections.

City Administrator Julie Martorana then spoke on the record to clarify the role and process of the Board of Appeals including appropriate and customary conduct for swearing in, public comment and discourse during the hearing.

The Chair then confirmed that all in attendance who wished to provide public comment had an opportunity to sign the sign in sheet. All persons who were to provide testimony and comments were then sworn in.

Old Business:

[BR-BOA-23-01-SE 401 – 403 East Potomac Street, Adaptive Re-use and Multifamily in the R-1 Zone](#)

Mr. Dell presented a brief history and overview of the newly adopted Ordinance 592 which permits adaptive re-use of existing non-residential structures in R-1 zoning district, to allow uses permitted the R-1 & R-2 zoning districts by right with a special exception approval. That Ordinance became effective on June 1, 2023.

The Applicants Ozzy Deniz & Sandesh Gowda were then invited to the podium. Applicants presented briefly to the BOA and the public. They also answered questions from Board members regarding parking, the construction timeline, number of units and findings of the building's existing condition.

Public Comment:

Letter from Chris Worth in opposition to the project see attachment A and email from Amilynn Adams that she agreed with issues raised in attachment A.

Email from Richard Foot in support of the project see attachment B.

Speaking in opposition during the hearing:

Scott McLean 309 East Potomac Street. – regarding density, flood issues

Joy Christakis – 409 East Potomac Street – regarding density, privacy, master plan conformance

Kathy Valdes – 21 East B Street -regarding density, staff interpretation of master plan, master plan conformance and privacy

Anthony Fletcher – 8 Third Avenue – regarding parking, light pollution, traffic pattern and density

Response and Discussion:

The applicant was then invited back to the podium for rebuttal.

Board members encouraged the applicant to keep an open dialogue with the neighbors during the planning commission and building phases.

Decision:

Mr. White made a motion to approve the Special Exception for a Multifamily in the R-1 Zone based on findings of fact and subject to 4 conditions. Mr. Stull provided the 2nd and the motion carried 3-0-0.

The Planning Director added that a Board Meeting will be scheduled next month to adopt resolution of these findings.

New Business:

None for this meeting - Next month's meeting will include update and resigning of the Board of Appeals Bylaws for the City of Brunswick.

Adjournment:

Being no other business, Mr. Williams moved to adjourn.

Respectfully submitted,

Gary Williams, Chair
Brunswick Board of Appeals



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THE BOARD OF APPEALS OF THE CITY OF BRUNSWICK RESOLUTION AND FINDINGS OF FACT NO. BR-BOA-23-01-SE

WHEREAS, pursuant to Article 24 of the Code of Ordinances of the City of Brunswick, as amended (the "**Zoning Ordinance**"), the Board of Appeals of the City of Brunswick (the "**Board**") is authorized to hear and decide appeals and requests for special exceptions under the Zoning Ordinance; and

WHEREAS, a full, complete and proper application was filed and all required fees paid to the Board by Mooseheart Lofts LLC (agent) (the "**Applicant**") pursuant to Article 24 of the Zoning Ordinance and the Bylaws and Procedures of the Board (the "**Bylaws**") requesting a special exceptions for use of the principal structure and property in case number BR-BOA-23-01 SE (the "**Application**"); and

WHEREAS, the Application requested a special exception for a multifamily dwelling unit within the principal structure on the 2nd and 3rd floors (the "**Building**") located on the corner of Mooseheart Alley and East Potomac Street and known as 401-403 East Potomac Street (the "**Site**") that is zoned R-1 Low Density Residential under the Zoning Ordinance; and

WHEREAS, the use is listed as permitted use by Special Exception approved by the Board of Appeals in the R-1 District under Section 11.4.B of the Zoning Ordinance; and

WHEREAS, the Board of Appeals may impose conditions on the use if warranted; and

WHEREAS, a public hearing on the Application was held on June 22, 2023 and again on July 27, 2023 and having been duly advertised and required notices sent in accordance with the Zoning Ordinance and the Bylaws; and

WHEREAS, at the public hearing the Applicant, having been duly sworn, offered verbal and written testimony to the Board in support of the Application on each of the required findings of fact set forth in Sections 11.4.B of the Zoning Ordinance and the Board received, reviewed and accepted into evidence for the record testimony and a staff analysis and report on the Application presented by Zoning Administrator; and

WHEREAS, the Board provided Applicant and all interested parties present the opportunity to cross-examine the Zoning Administrator and all witnesses as required by the Bylaws.

NOW THEREFORE, after due consideration of all of the evidence and testimony presented at the public hearings on the Application, the Application itself, and having inspected the Site, the Board hereby makes the following findings of fact with regard to the Application:

1. The Site is zoned R-1 Low Density Residential
2. The Brunswick Master Plan adopted and approved on November 4, 2011 (the "**Master Plan**") designates the Site as "R-1 Low Density Residential" where the establishment of a variety of housing types is encouraged.
3. The site is bordered by R-1 & R-2 uses that are compatible with the use proposed by the Special Exception.
4. The Building on the Site was constructed prior to the adoption of the Zoning Ordinance and was occupied by and an established use: and
5. Multifamily is an allowed use with Special Exception approval by the Board of Appeals in the R-1 District for non-residential structures.
6. The Special Exception is in harmony with the purpose and intent of the Master Plan because it will promote economic vitality in the local community and will be located in one existing principal structure in the R-1 District and will allow the immediate reuse of a vacant non-residential building.
7. The nature and intensity of the operations involved in or conducted in connection with the use proposed by the Special Exception and the size of the Site in relation to the use proposed by the Special Exception is such that the use proposed by the Special Exception will be in harmony with the appropriate and orderly development of the neighborhood in which it is located because the proposed uses will be primarily contained indoors and will create additional housing stock.
8. Operations in connection with the Special Exception will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics, than would be the operations of any permitted use not requiring Special Exception approval because the uses proposed by the Special Exception will mainly involve less intense activity than was previously occupying the building.
9. Based on the testimony presented, the plans provided by the Applicant in support of the Application and the Board's viewing of the Site, the parking areas on the Site will comply with the off-street regulations of the Zoning Ordinance
10. The street system providing access to the uses proposed by the Special Exception, East Potomac Street and Mooseheart Alley are adequate to serve the Site for the intended uses under the Special Exception because the street meets or exceeds City design standards.

NOW THEREFORE BE IT RESOLVED, that based on the foregoing findings of fact, the Board of Appeals of the City of Brunswick, grants the Special Exceptions requested by the Applicant in the Application, subject to the following conditions:

1. The Applicant is bound by their testimony and the testimony of their witnesses and consultants to include the exhibits and documents distributed to the Board at the June 22, 2023 and July 27, 2023 Board of Appeals hearing.
2. The uses and areas for those uses are limited to the Special Exception uses listed in the Application and accessory activities that would be customary to the listed uses.
3. The uses proposed by the Special Exception are subject to and shall comply with all State, County and City Development processes, codes, permits and inspections.
4. The Parking Lot lighting be designed to minimize light pollution.

Said action granting the Special Exceptions requested by the Applicant in the Application was unanimously approved and adopted by the Board of Appeals on July 27, 2023, upon motion by Mr. White, seconded by Mr. Stull.

Approved and adopted by the Board of Appeals this 31st day of August 2023.

Gary Williams, Chairman

Steve White, Vice Chairman

Walter Stull, Secretary