

ARTICLE 24: BOARD OF APPEALS

24.1 General:

In compliance with provisions of Article 66B of the Annotated Code of Maryland, the Board of Appeals of the City of Brunswick is hereby created. The Brunswick Board of Appeals shall consist of a chairperson and two members, each appointed and confirmed by the Mayor and Council and serving staggered terms of one to three years. An alternate member shall also be appointed and confirmed by the Mayor and Council, and shall sit on the Board in the absence of any member. If the alternate member is also absent, a temporary alternate member may be designated by the Mayor and Council.

A member of the Board may be removed for cause, upon written charges, and after a public hearing. Vacancies shall be filled for the unexpired terms of any member whose term becomes vacant.

24.2 Organization:

The Board shall organize and adopt rules in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the Chairman, or in his/her absence, the Acting Chairman. The Chairman (or Acting Chairman) may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall make a record of all proceedings in the form of minutes, showing the vote of each member upon question, or, if absent or failing to vote, indicating such fact, which shall be filed at City Hall and shall be a public record. All actions of the Board shall be by resolution. Each member of the Board shall be paid fifteen (\$15.00) per meeting attended for the purpose of hearing appeal(s).

24.3 Powers of the Board of Appeals:

- A. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Zoning Administrator or authorized agent under the provisions of this Ordinance.
- B. To hear and grant or deny special exceptions as allowed by the terms of this Ordinance.
- C. To authorize, upon appeal, in specific cases, variances from the terms of this Ordinance, provided that the need justifying the variance is substantial and immediate and not merely for the convenience of the applicant or to increase the dollar value of a property. The applicant must prove that the strict application of the regulation creates a practical difficulty, or specifically that:
 - 1. strict compliance with the regulation would prevent the use of the property for a permitted purpose or would render conformance unnecessarily burdensome;
 - 2. a lesser variance than that applied for would not provide adequate relief; and

3. granting the variance would not contradict the purpose and intent of the Zoning Ordinance or compromise the public interest.
- D. To authorize the substitution of one non-conforming use for another, provided that the proposed use is determined to be more appropriate to the zoning district than the non-conforming use it is proposed to replace, that it conforms to the intent and the purpose of the zoning district in which it is proposed to be located, and is of the same general character as the principal permitted uses or authorized special exceptions of that district. Furthermore, the use must conform to the recommendations of the Master Plan. The Board of Appeals may impose reasonable conditions on the use for the purpose of protecting the public interest.
- E. To authorize the expansion of a principal or accessory building or structure containing a non-conforming use, taking into consideration the nature of the neighborhood and the effect of the proposed expansion on nearby property owners. Reasonable conditions may be imposed for the purpose of protecting the public interest.
- F. To authorize the expansion of, or addition to, a non-conforming principal or accessory building or structure, taking into consideration the nature of the neighborhood, the effect of the proposed expansion on nearby property owners, and the power of the Board of Appeals to grant variances from height and setback restrictions in accordance with the applicable sections of this Ordinance pertaining to variances. Reasonable conditions may be imposed for the purpose of protecting the public interest.
- G. Floodplain Ordinance. The Board of Appeals may consider a special exception and/or variance application to permit the expansion or replacement (substitution) of an existing nonconforming use or to permit development of an existing parcel of record, as defined herein, lying totally within the Floodplain Areas in accordance with the Floodplain Ordinance and shall apply the following criteria:
 1. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause by the applicant;
 - b. A determination that failure to grant a variance would result in exceptional hardship (other than economic) to the applicant;
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local and State laws or ordinances. The variance action shall be the minimum necessary, considering the flood hazard, to afford relief. In considering a variance action, comments from the State Coordinating Office of the Water Resources Administration must be taken into account and maintained with the permit file; and
 - d. The requirements for the granting of a variance in non-floodplain areas set forth in Section 24.3.C. and Section 24.8.B. have been satisfied.

2. Variances may not be granted for the following:

- a. placement of fill or any development in the floodway if any increase in flood levels would result; or
- b. new buildings in the floodway.

(Ord. 423, 444)

24.4 Appeals:

Any person aggrieved, or any officer, department, board or bureau of the City may appeal any decision made by the Zoning Administrator or authorized agent by filing, within twenty (20) days of the decision, a notice of appeal, specifying the grounds on which the appeal is based. The Zoning Administrator/authorized agent shall forward to the Board all records pertaining to the decision and subsequent appeal.

24.5 Fees:

A fee Established by the Mayor and Council shall accompany each application of an appeal to the Board. (Amended Ord. 03-07)

24.6 Stay of Proceedings:

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such a case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board or by the Circuit Court of Frederick County, on application after notice to the Zoning Administrator and on due cause shown.

24.7 Appeal Hearings:

The Board shall hold a public hearing before making a decision on any appeal, and shall render a decision regarding that appeal within a reasonable time after it is submitted. At the hearing, any party may appear in person or by agent or attorney.

24.8 Appeals, Variances, Etc.:

A. Generally

1. An application for appeals, variances or special exception shall be made on forms approved by the Planning and Zoning Office.
2. The application and the information required in subsection (3) below shall be filed with the Zoning Administrator a minimum of 30 days prior to the regularly scheduled monthly meeting of the Board of Appeals.
3. Required information shall include:

- a. Plot plan or accurate drawing of the property showing the distances of all existing and proposed structures from all property lines, driveways and parking areas and surrounding zoning;
 - b. Name and address of each person owning property adjacent to the subject property;
 - c. Plans, architectural drawings, photographs, elevations, specifications or other detailed information fully depicting the exterior appearance of any existing structures on the property, including signs and the proposed construction;
 - d. In addition, for all applications for a special exception, a statement shall be provided explaining in detail how the use is to be operated. The following information is required to be submitted:
 - 1) Hours of operation;
 - 2) Number of anticipated employees;
 - 3) Equipment involved; and
 - 4) Any special conditions or limitations, which the applicant proposes for adoption by the Board.
4. Fee shall be paid at the time of filing of application in accordance with the fee schedule.
 5. The Board of Zoning Appeals shall hold a public hearing before making a decision on any appeal or other matter within its powers. Upon accepting an application for an appeal, variance, or special exception, the Zoning Administrator shall schedule the public hearing by the Board of Appeals. Appeals and applications filed in proper form shall be numbered serially, docketed and placed upon the calendar of the Board.
 6. The Administrator shall cause to be published a notice of the public hearing. This notice shall be published in a newspaper of general circulation in the city appearing once each week for two (2) successive weeks with the first appearing at least fourteen (14) days prior to the date set for the hearing. All property owners within three hundred feet (300') of the site, whether separated by streets, railroads, or other rights-of-way, shall be notified by mail of the time, date, place, and nature of the public hearing.
 7. The Board of Appeals shall make an on-site inspection of the premises involved in the application.
 8. A decision of the Board granting a variance or a special exception will be void 2 years from date of approval by the Board of Appeals unless the use is established or a building permit is issued and construction has begun and is in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a one-time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

B. Variances

1. The Board of Appeals may authorize a variance in height, lot area and yard regulations only in cases where the strict compliance with the terms of this chapter would result in unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to the public health, safety and general welfare.
2. An application for a variance shall be filed with the Board of Appeals only after refusal of a zoning certificate by the Zoning Administrator.
3. The Board of Appeals shall not grant a variance unless and until the following conditions are satisfied:
 - a. That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same district;
 - b. The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this chapter;
 - c. That the special conditions and circumstances do not result from the actions of the applicant;
 - d. That granting the variance will not confer on the applicant any special privilege that is denied by this chapter to other lands or structures in the same district;
 - e. A public hearing has been held; and
 - f. That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
4. In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted is a violation of this chapter.
5. Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved, or any use expressly or by implication prohibited by the terms of this chapter in said zone.

C. Special Exceptions

1. An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.

2. A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:
 - a. The proposed use is consistent with the purpose and intent of the Master Plan and of this chapter;
 - b. The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located;
 - c. Operations in connection with any special exception use 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;
 - d. Parking areas will comply with the off street parking regulations of the Zoning Ordinance and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety; and
 - e. The road system providing access to the proposed use is adequate to serve the site for the intended use.
3. In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use.
4. A special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under this chapter and is hereby authorized to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of this chapter and may be grounds for termination of the special exception.
5. The Board of Appeals shall not grant a special exception unless and until:
 - a. A written application for a special exception is submitted indicating the section of this chapter under which the special exception is sought and stating the grounds on which it is requested; and
 - b. A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.

6. No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.
7. If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for one (1) year after the date of denial of the petition.

D. Questions of Interpretation and Enforcement

All questions of interpretation and enforcement (including applications for Zoning Certificates) shall be first presented to the Zoning Administrator and then such questions shall be presented to the Board of Appeals only on appeal from the decision of the Zoning Administrator, and recourse from the decisions of the Board of Appeals shall be to the courts as provided by law. In addition, certain provisions of this chapter are adopted and enforced as an agreement with the Federal Emergency Management Agency, National Flood Insurance Program regulations, and the Maryland Water Resources Administration flood management grant program regulations. Should a dispute arise concerning the interpretation of these provisions of the chapter, the counsel of the Federal Emergency Management Agency, the Maryland Department of Natural Resources, or the National Flood Insurance regulations shall prevail. The City of Brunswick Floodplain Ordinance shall be amended as required by federal regulations. Any amendments to flood hazard management regulations are subject to the approval of the Federal Emergency Management Agency and the Maryland Department of Natural Resources.

(Ord. 423)

24.9 Action of the Board of Appeals:

In exercising its power, the Board may, in conformity with the provisions of statute and of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator.

The Board may not take action that will be contrary to City of Brunswick's Master Plan. When a question arises as to whether the Board's contemplated action is contrary to the Master Plan, the Board shall request the recommendation of the Planning Commission.

24.10 Application Disapproved:

If the application is disapproved, the Board shall take no further action on another application for substantially the same proposal, concerning the same property, for one (1) year from the date of such disapproval. 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 the withdrawal of the application.

24.11 Appeals:

- A. Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board, commission, or bureau of the jurisdiction affected by any decisions of the administrative officer not including the Planning Commission. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to Board all the papers constituting the record upon which the action appealed from was taken.
- B. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Appeals after notice of appeal shall have been filed with him that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.
- C. The Board of Appeals shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.
- D. In exercising the above-mentioned powers such as Board may, in conformity with Md. Ann. Code, Art. 66B, as amended, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
- E. Appeals from decisions of the Board of Appeals shall be to the Circuit of Frederick County in accordance with the Maryland Rules.

(Ord. 423)