

Planning Commission, Planning Board and Board of Appeals Education Course

Developed pursuant to Section 1-206 of the Land Use Article, Annotated Code of Maryland.

Modules Six & Seven: The Roles and Responsibilities of a Planning Commissioner/Board Member and a Board of Appeals Member



Planning Commission, Planning Board and Board of Appeals Education Course

Developed pursuant to Section 1-206 of the Land Use Article, Annotated Code of Maryland.



Planning Commission, Planning Board and Board of Appeals Education Course

Welcome!

I am pleased to welcome you to the online Planning Commission, Planning Board and Board of Appeals Education Course, which was developed by the Maryland Department of Planning so that members of planning boards or commissions and boards of appeal can fulfill their education requirements under Section 1-206 of the Land Use Article, Annotated Code of Maryland. This requirement first came about through passage of Smart and Sustainable Growth Act of 2009, which implemented the requirement that, within six (6) months of appointment, members of local planning boards or commissions and boards of appeal complete an education course concerning certain aspects of land use planning.

This education requirement applies to the non-charter counties and municipalities that exercise planning and zoning authority, and to charter counties, including Montgomery and Prince George's counties. The law provides that the course must include education on (i) the role of the comprehensive plan, (ii) proper standards for special exceptions and variances, as applicable, and (iii) the jurisdiction's zoning, planned development, subdivision and other land use ordinances and regulations.

This course was developed with input from 2007's Task Force on the Future of Growth and Development, and your partners in planning policy and implementation including the Maryland Association of Counties (MaCo), Maryland Municipal League (MML), Maryland Planning Commissioner's Association (MPCA) and others. This joint effort has resulted in the course you are about to take, and we hope you find it informative, useful and beneficial in your important role as a planning official.

Our goal is to provide good information to help you make even better informed planning decisions for your city, town or county. I welcome and encourage your feedback on this course, and if you have any suggestions after completing it, please feel free to pass them along.

Enjoy the course!

Sincerely,



Rebecca L. Flora, AICP, LEED ND/BD+C
Secretary, Maryland Department of Planning

Table of Contents

Module Six: The Roles and Responsibilities of a Planning Commissioner/Board member	.....	6-1
Roles	.....	6-1
Responsibilities	.....	6-1
The Work of the Planning Commission/Board	.....	6-1
Developing a Comprehensive Plan	.....	6-2
Commission Work Sessions	.....	6-2
Public Input into Planning Commission Decisions	.....	6-2
Other Plans	.....	6-2
Public Hearings	.....	6-2
Comments	.....	6-3
Adoption	.....	6-3
The Six Year Review	.....	6-3
Implementation Tools	.....	6-3
Consistency	.....	6-3
Zoning Ordinance and Map	.....	6-4
The Change or Mistake Rule	.....	6-4
Subdivision and Development Regulations	.....	6-4
Other Tools	.....	6-5
Programs and Financing for Public Structures, Improvements, and Land Acquisition	.....	6-5
Implementation Authority of the Planning Commission	.....	6-5
Variances	.....	6-6
Administrative Adjustments	.....	6-6
Special Exceptions	.....	6-6
Site Plans and Subdivision Requests	.....	6-6
Building Permits and Plot Plans	.....	6-7
Use of Land for Public Purposes	.....	6-7
Module Six: Review Questions	.....	6-8
Module Seven: The Roles and Responsibilities of the Board of Appeals	.....	7-1
Non-Charter Counties and Municipalities	.....	7-1
Board Membership	.....	7-1
Jurisdiction	.....	7-1
Quasi-judicial rules of procedure	.....	7-2
Testimony	.....	7-2
For the record	.....	7-2
Open Meetings Act procedure	.....	7-2
Variances	.....	7-2

Administrative Adjustments	7-3
Special Exceptions	7-3
Deliberation	7-3
Module Seven: Review Questions	7-4

Module Six: The Roles and Responsibilities of a Planning Commissioner/Board member

Roles

The planning commissioner/board member has both formal and informal roles in the course of their work. Formal decision-making and advisory roles, such as preparing the comprehensive plan and implementing the plan through local ordinances, are designated by State and local laws, or through planning commission/board by-laws. In addition, in the course of carrying out formal roles, the planning commissioner takes on more informal roles such as negotiator, mediator, unofficial advisor, researcher, and coordinator.

Ultimately, it is up to the local jurisdiction to determine the role of the planning commission/board. In some, the planning commission/board may serve a formal, but advisory role, making recommendations to the board of appeals. In others, the commission plays a much larger role with greater responsibilities. However it is structured, the planning commission/board will have both formal and informal roles in the course of its work.

Formal roles are designated by state or local laws, or through planning commission/board bylaws. The primary formal roles of the planning commission are decision-making and advisory roles. Informal roles evolve as a result of the nature of the planning commission's work.

Responsibilities

Responsibilities are defined as the “sphere or extent of activities.” In charter counties, the responsibilities of the planning commission/board are established in the charter or by ordinance. In general, a charter county planning commission/board does the following:

- The planning commission/board works with the community to craft a comprehensive plan;
- The planning commission/board recommends ordinances and regulations to implement the 12 visions and the plan;
- The planning commission/board executes the plan by creating and applying appropriate implementation tools; and
- The planning commission/board implements the 12 visions for economic growth and resource protection as amended.

None of these tasks are to be taken lightly. They require the planning commission to grapple with different viewpoints and, above all, to represent and work for the greater good of the public interest first and foremost.

For non-charter counties and municipalities the Land Use Article defines these responsibilities broadly and empowers the planning commission/board to engage in a variety of activities to achieve the visions. For example, planning commissions/boards have the ability to initiate reports on specific issues, hold workshops on the plan for public officials, and craft new mechanisms to achieve the goals of the plan.

The Work of the Planning Commission/Board

The planning commission/board has a basic decision to make in carrying out its responsibilities – it can choose to operate in either an active or reactive mode. In the reactive mode, the planning commission/board addresses items as needed; in this way, the planning commission/board is fulfilling its legal responsibilities. But by working actively, the planning commission/board recognizes and seizes opportunities to affect growth and development consistent with the comprehensive plan. A planning commission/board working actively more often fulfills its legal responsibilities as well as its mission.

In addition to the role of the planning commission/board as an entity, planning commissioners/boards should be aware of their individual responsibility. In order to be an effective member of a planning commission/board, each member should become familiar with the jurisdiction's plans and ordinances, as well as applicable Maryland law. Similarly, commissioners/board members should be familiar with the details on each matter that comes before the planning commission/board.

Developing a Comprehensive Plan

As discussed elsewhere in this course, a major responsibility and formal role of planning commissions/boards is to prepare a comprehensive plan. The Land Use Article states that once the planning commission/board is created, it has the responsibility to prepare a comprehensive plan for its jurisdiction and to present this plan to the local legislative body or governing body for consideration and adoption.

As caretakers of the comprehensive plan, planning commissions are charged with helping a community achieve its full potential, as outlined by the overall vision of the plan. Planning commission members accept the civic responsibility of helping residents, businesses, and property owners develop and implement a vision for how the community is to look and function in the future.

The development of a comprehensive plan is not often an easy task. Planning commissions are required to grapple with different viewpoints and, above all, to represent the overall public interest over the long-term. As such, it is appropriate to engage local staff, create advisory groups or task forces, and /or hire outside technical advisors (consultants) to assist in the development of the comprehensive plan.

Commission Work Sessions

Planning commission/boards typically hold open work sessions when developing the comprehensive plan and such sessions are usually in addition to the planning commission regular monthly meeting. These sessions are open to the public to attend and listen to the discussion, but, at this point, are designed for planning commission/board input only. During these work sessions, the planning commission/board members discuss information that has been gathered, review background studies, evaluate existing conditions, identify key issues, and review the existing plan for necessary revisions.

Public Input into Planning Commission Decisions

At any point in the process, the planning commission/board may elect to identify and solicit input from affected citizens, community leaders, and various community groups and associations. The planning commission/board can also elect to form a citizen's advisory committee to gain public input in the development of an overall community vision.

It is recommended that the planning commission/board attempt to engage the public in the forefront of the plan development process to include opportunities such as public workshops, open forums, community surveys, and public outreach in the form of community newsletters and flyers.

However, public participation is not guaranteed. Whether public input is or is not sought, the 1977 Maryland Open Meetings Act is the governing law, codified in Article 10, Subtitle 5 of the State Government Article of Annotated Code of Maryland.

Other Plans

It is also strongly recommended that the planning commission/board make every effort to including neighboring jurisdictions and other levels of government (Federal and State) in the plan development process. The plan will be more viable if important inter-jurisdictional relationships are identified. Furthermore, coordinated planning can create supportive linkages between local land use policy and other government programs for technical assistance, funding, and regulatory permits.

Public Hearings

Once the planning commission has prepared a draft of the comprehensive plan, a public hearing date must be scheduled to allow community input. For non-charter counties and municipalities, the required public hearing must be scheduled beyond the 60-day review period for State Clearinghouse review, as previously mentioned under the State Government Role section.

Comments

At the planning commission/board public hearing, the planning commission/board hears and considers all State comments, local government comments, and public comments. Once the public hearing is closed, the planning commission/board may opt to accept additional written comments for a designated period of time. Upon completion of the comment period, the planning commission/board decides what, if any, revisions need to be made to the draft document based upon all of the review comments received.

Adoption

A final draft of the comprehensive plan is prepared and, during a regular planning commission/board meeting, a recommendation for adoption is made to the local legislative body or governing body. In charter counties, an ordinance may specifically outline procedures for the process of comprehensive plan adoption.

The Ten Year Review

The Land Use Article requires all jurisdictions to implement the 12 planning visions through the adoption of ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are “consistent” with the local comprehensive plan.

Implementation Tools

Implementation tools are laws, regulations, guidelines, and budgets that are designed to help execute the plan. All local jurisdictions are required to ensure that implementation tools are closely tied to the vision, goals, objectives, and policies outlined in the plan.

Consistency

The relationship between comprehensive plans, implementation tools, and decisions is critically important. When crafting implementation tools, planning commissions/boards should give careful consideration to whether or not the tool in question will help to achieve these goals and objectives.

Without such an analysis, the comprehensive plan will remain a list of good ideas, rather than an instrument to help the community achieve its goals. In order for these tools to carry the weight of law, the local legislative body must adopt them. The planning commission/board acts in a formal, advisory role, making recommendations to the local legislative body.

The Smart and Sustainable Growth Act of 2009 clarifies “consistency” between the local comprehensive plan and the local zoning ordinances and regulations as actions that further, and are not contrary to, the policies, timing of implementation of the plan, timing of rezoning, timing of development, development patterns, land uses, and densities or intensities. In order to implement the 12 planning visions, the 1992 Economic Growth, Resource Protection, and Planning Act required all jurisdictions to adopt ordinances and regulations (this includes rezoning ordinances), planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are “consistent” with the plan. This new definition applies to special exceptions (for non-charter counties and municipalities only), water and sewer amendments and critical area growth allocations (codified in the critical area law).

In order not to interfere with ordinances that allow planned unit developments in zones and density bonuses, a modified version of the definition of consistency applies. In Priority Funding Areas, “consistency” between the local comprehensive plan and the local zoning ordinances and regulations are actions that further, and are not contrary to, the policies, timing of implementation of the plan, timing of rezoning, timing of development and development patterns. Land uses and densities or intensities are not included in “consistency” in order to provide flexibility in adopting ordinances that encourage mixed use developments and density bonuses,

Zoning Ordinance and Map

Zoning is the most fundamental planning implementation tool. The zoning ordinance establishes regulations for the use of land and some standards for development within identified zoning district boundaries. The related zoning map identifies properties that fall within different zoning categories. Zoning regulations must be uniform for each class or kind of development throughout each district, but regulations usually differ between districts.

Each jurisdiction should maintain a single, official zoning map, and it should be signed and dated. This is a legal document and it should be current at all times. If copies of the zoning map are requested, the copies should be dated and include a disclaimer identifying the copy as “unofficial.” This will ensure that people will not rely on outdated maps for important zoning information.

Jurisdictions may also want to keep archival records of previous maps for historical purposes. If the jurisdiction enacts zoning, the planning commission/board is required to make recommendations to the local legislative body when the initial zoning is being considered. Most charter county planning commissions/boards also make these recommendations. After the initial zoning is enacted, the planning commission continues in a formal, advisory role, and makes recommendations to the local legislative body regarding any changes to the zoning regulations or map (4.05.a.2.5). The local legislative body makes the final decision (4.05).

Changes to the zoning regulations can take place in the form of zoning text amendments. This method allows the regulations to change without necessitating a complete overhaul of the ordinance.

Property owners, others with a proprietary interest in land, and the elected governing body can request changes to the zoning designation of a particular parcel or parcels of land. “Comprehensive rezoning” occurs due to a policy change and is usually associated with a comprehensive plan amendment. This is the preferred rezoning process. Even if it only results in the rezoning of a single piece of property, it is called “comprehensive” because it is based on a thorough, comprehensive assessment of the area under consideration.

The Change or Mistake Rule

The “change or mistake” rule puts a difficult burden of proof on the applicant for piecemeal rezoning. In certain cases, however, there may be cause to look at rezoning based on the merits of an individual case. Maryland case law outlines the findings that are required for this type of rezoning, called “piecemeal rezoning,” to take place. In non-charter counties and municipalities, the legislative body shall find that the rezoning is consistent with the comprehensive plan and that the current zoning was applied in error, or that a change in the neighborhood has occurred in the time since the current zoning was applied. In charter counties, the body that reviews piece meal zoning is determined by ordinance.

It is important to understand that mere fruition of the comprehensive plan does not constitute “change,” because this change was foreseen. Even if change is proven, the local government does not have to grant the request to rezone. The courts do not consider a less-than-ideal decision, or a decision that does not reflect the best economic value, a “mistake.” The courts also do not consider a factual error a “mistake” if it was readily knowable.

Subdivision and Development Regulations

In non-charter counties and municipalities the Land Use Article also empowers the planning commission/board to prepare and present to the governing body subdivision and development regulations. In charter counties, the responsibility for subdivision and development regulations is established by ordinance.

Subdivision regulations govern the division of a parcel or parcels of land and may also include additional requirements for development. Development regulations supplement zoning and subdivision regulations with additional requirements for development, such as roads and sidewalks.

It is important to note that non-charter counties and municipalities do not have subdivision plat approval without adopted subdivision regulations.

Other Tools

In addition to zoning, subdivision, and development regulations, the Land Use Article gives a non-charter county and municipal planning commission/board the authority to prepare and present to the governing body any other implementation tool that it deems appropriate.

The Land Use Article specifically encourages the planning commission to consider use of innovative tools. Tools listed include transfer of development rights, mixed use development, adequate public facilities, moderately priced dwelling unit ordinances, and others (§10.01).

Other tools include things like rural development guidelines, capital improvement programs, and housing and building codes. Regardless of the tool in question, the planning commission acts in its formal, advisory role and the local legislative body has decision-making authority.

Programs and Financing for Public Structures, Improvements, and Land Acquisition

In a non-charter county or municipality the planning commission/board/board is also required to recommend to appropriate public official programs and financing for public structures, improvements, and land acquisition (§3.05.d.2.i). This requirement refers to capital expenditures (money spent on physical improvements to things like sidewalks, parks, roads, and lights).

Ideally, the planning commission/board should prepare a capital improvement plan that outlines capital expenditures for a period of five years, and it would include new construction, acquisition, repairs, and maintenance. At the very least, the planning commission/board should review proposed expenditures to ensure consistency with the comprehensive plan.

Implementation Authority of the Planning Commission

In addition to creating and amending implementation tools, the planning commission/board also implements the comprehensive plan by administering many of these tools. The relationship between comprehensive plans, implementation tools, and decisions is critically important. Decisions must be consistent with the regulations, which in turn must be consistent with the comprehensive plan.

If the jurisdiction, through a hearing officer, the board of appeals or planning commission/board, is granting frequent relief to certain provisions in the zoning, subdivision, or development regulations, this may indicate that the regulations are not consistent with the goals of the comprehensive plan or are otherwise inappropriate.

For example, if many citizens are seeking and receiving special exceptions for rather benign home occupations – such as computer-based work – then maybe the jurisdiction should permit this use by right. If people want to build new homes in an area designated for infill development, but they need front setback variances in order to be able to build the homes close to the street, like the existing homes, then maybe the jurisdiction should revise the setback requirements. The planning commission/board should be aware of these trends, evaluate the need to revise regulations, and be prepared to make changes accordingly.

In administering these tools, the planning commission/board typically acts in a formal, decision-making role or as formal advisors to the Board of Appeals or to the local legislative body.

In contemplating the rendering of any decision described below and otherwise, it is important to remember that decisions must be consistent with the regulations, which in turn must be consistent with the comprehensive plan.

Variances

Applicants can request a variance from certain development standards such as setbacks, building height, and lot size, which can be found in the zoning or development regulations. If a variance is necessary, the applicant must submit information to support the application, whether it is a subdivision, site plan review, plot plan, or building permit. In some jurisdictions, in the course of its review, the planning commission may make a recommendation regarding the variance to the Board of Appeals. The Board of Appeals makes the final decision regarding the variance in non-charter counties and municipalities. In charter counties, variances are often decided by a hearing officer/zoning commissioner and appealed to the Board of Appeals.

Maryland Courts have defined the conditions under which a variance may be granted. A variance may be granted for cases in which the applicant faces a hardship due to features or circumstances that are unique and not generally shared by other property owners in the same zoning district. The unique circumstances must not be self-imposed or self-created by the applicant, and the granting of the variance must not confer special privileges that would be denied to other property owners in the same zoning district. The granting of the variance must confer only the minimum relief needed.

Administrative Adjustments

In order to streamline the development process, in non-charter counties and municipalities the Land Use Article permits the legislative body to authorize the planning director or another designee to grant administrative adjustments from certain requirements in the zoning ordinance, such as height; setbacks; bulk; parking; loading, dimensional, and area requirements; and similar local requirements (§4.05.D). In order to do this, however, the legislative body must develop criteria and procedures for, and limitations to, these administrative adjustments, working in consultation with both the planning commission and the board of appeals.

Special Exceptions

Zoning categories generally include uses permitted by right and uses permitted by special exception. A special exception is a land use that is permitted subject to specific conditions in the ordinance. This makes it possible to allow uses where they are reasonable, but deny them where the specific conditions cannot be met. For non-charter counties and municipalities the Board of Appeals makes the final decision on special exception requests. For special exceptions in non-charter counties and municipalities, the new consistency definition applies and must be met before a special exception is granted.

In charter counties, special exceptions are often decided by a hearing officer/zoning commissioner and then appealed to the Board of Appeals.

Site Plans and Subdivision Requests

In non-charter counties and municipalities the planning commission/board also reviews and makes decisions on subdivision requests and site plans, and it has the power to approve, deny, or approve with conditions, basing the decision on applicable zoning codes, subdivision regulations and development regulations.

In this case, the planning commission functions in a formal, decision-making role. Although the decisions made by the planning Commission/board are final and do not go through a further process with the local legislative body, they can be appealed. In charter counties, the body that approves site plans and subdivision requests will be set by ordinance.

In non-charter counties and municipalities the planning commission does have the authority to delegate this responsibility to an administrative officer; however, in order to do this, the planning commission must first prepare non-discretionary review criteria for adoption by the local legislative body.

Building Permits and Plot Plans

The role of the planning commission/board with respect to building permits and plot plans varies by jurisdiction. Plot plans show the physical location and dimensions of buildings and are one way to make sure that what is approved is the same thing as what is built. The planning commission/board can serve as a formal advisor to another approving authority; it can make the final decision; or it may have no role at all.

Use of Land for Public Purposes

In non-charter counties and municipalities the planning commission/board has authority over the use of land for public purposes, and these decisions should also be made within the context of the plan.

Specifically, the planning commission/board is charged with approving the location, character, and extent of publicly or privately owned streets, squares, parks, or other public way, ground, or open space. This occurs through the subdivision or site plan process; the planning commission/board has the authority, in the course of its review of subdivisions and site plans, to require the development to include public facilities.

However, there must be a rational nexus between the comprehensive plan and the requirement for public land. This means that the government must be able to point to a logical connection between the proposed action and a stated goal in the comprehensive plan, and that the burden borne by the property owner is comparable to the public benefit.

Module Six: Review Questions

1. Subdivision regulations do which of the following?
 - A. Subdivision regulations govern the division of a parcel or parcels of land and may also include additional requirements for development.
 - B. Subdivision regulations govern what land uses are allowed in each zone.
 - C. Subdivision regulations are used to protect sensitive lands such as floodplains.
 - D. Subdivision regulations control the design of how a development will look.
2. Which of the following is a responsibility of the Planning Commission for non- charter counties and municipalities in Maryland?
 - A. The planning commission/board works with the community to craft a comprehensive plan.
 - B. The planning commission/board executes the plan by creating and applying appropriate implementation tools.
 - C. The planning commission/board implements the 12 visions for economic growth and resource protection as amended.
 - D. All of the above.
3. When a planning Commission is engaged in the development of a local comprehensive plan, which of the following is not appropriate?
 - A. Engage local staff fully in the development of the plan.
 - B. Create advisory groups or task forces to inform the development of the document.
 - C. Hire outside consultants or technical advisors.
 - D. All of the above are appropriate.
4. What typically takes place at a Planning Commission comprehensive plan work session?
 - A. The planning commission/board drafts the plan using computers or notebooks.
 - B. The planning commission/board members discuss information that has been gathered, review background studies, evaluate existing conditions, identify key issues, and review the existing plan for necessary revisions.
 - C. These are always closed to the public and the commission should always craft a vision for the plan without public input.
 - D. None of the Above
5. Every six years, each jurisdiction must do what with their Comprehensive Plan?
 - A. Hold a special public hearing.
 - B. Take the plan off the shelf and vacuum any dust.
 - C. Review and, if necessary, update the plan.
 - D. Update the title page and the maps.

Module Seven: The Roles and Responsibilities of the Board of Appeals

Depending upon the authority under which your Board of Appeals is created, certain roles and responsibilities apply. But before we get to that, Maryland law sets out very different authority for board of appeals depending on the jurisdiction.

Non-Charter Counties and Municipalities

A board of appeals is required for non-charter counties and municipalities.

Charter Counties

A board of appeals is authorized for charter counties. While charter counties are not required to have a board of appeals, all of the charter counties have established them.

Board Membership for Non-Charter Counties and Municipalities

- A board of appeals consists of at least three members.
- The terms of office of the members of a board of appeals are 3 years.
- A member of a board of appeals shall be appointed by the local executive and confirmed by the local legislative body.

Board Membership for Charter Counties

The number of members of a board of appeals is not specified and is generally set by ordinance. The members are appointed by the local legislative body and not subject to the appointment authority of the local legislative body.

Jurisdiction

The jurisdiction (or scope of duty) of a board of appeals depends on whether they are a municipality, non-charter county or charter county.

For a municipality and non-charter county board, the jurisdiction of the board is to:

- 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 this article or of any ordinance adopted under this article;
- Hear and decide special exceptions to the terms of an ordinance on which the board is required to pass under the ordinance; and
- Authorize on appeal in specific cases a variance from the terms of an ordinance.

For a charter county board, the jurisdiction of the board is to hear:

- An application for a zoning variation or exception or amendment of a zoning ordinance map;
- The issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and
- The assessment of any special benefit tax.
- Because the language authorizing charter boards is broader, they typically hear other non-zoning cases such as retirement issues, animal control cases, etc. Other types of cases are often detailed in a local ordinance adopted by the charter county.

Quasi-judicial rules of procedure

Unlike a planning commission which recommends and decides policy issues such as recommending zoning ordinances, a board of appeals acts in a “quasi-judicial” capacity hearing cases that may be appealed to the circuit court in the jurisdiction in which the board is located.

Because a board of appeals functions in this unique quasi-judicial capacity, the rules of procedure that will be followed by a board are very different than those followed by a planning board or commission. Each board of appeals is likely to have rules of procedure that carefully spell out the procedure that must be followed when hearing a case. Each board member should be very familiar with those rules of procedure.

Testimony

All witnesses testifying in a board of appeals hearing must testify under oath.

For the record

Because it is a quasi-judicial hearing, all of the proceedings of the Board are recorded. A board of appeals shall make a transcript of all proceedings, showing the vote of each member on each question or the member's absence or failure to vote.

The record of the board's proceedings is important in an appeal to a circuit court from the decision of a board of appeals, and shall be decided by the circuit court on the record transmitted by the board of appeals. It may not be heard *de novo*.

Open Meetings Act procedure

Hearings of board of appeals are subject to the Maryland Open Meetings Act (OMA). While at a planning board or commission hearing members of the public are generally invited to testify, a person can testify at a Board of Appeals hearing only if they are a witness in the case. In other words, the public does not have the right to testify at a board of appeals hearing.

Like any other public body, a board of appeals can conduct a closed session of the body for specified reasons under the Open Meetings Act. For example, a board could go into closed session to seek legal advice on the proper legal standard for a special exception. A board of appeals must deliberate on a case that has been heard in open session. Most boards will deliberate in open directly after a case has been heard.

Variances

Applicants can request a variance from certain development standards such as setbacks, building height, and lot size, which can be found in the zoning or development regulations. If a variance is necessary, the applicant must submit information to support the application, whether it is a subdivision, site plan review, plot plan, or building permit. In some jurisdictions, in the course of its review, the planning commission may make a recommendation regarding the variance to the Board of Appeals. The Board of Appeals makes the final decision regarding the variance in non-charter counties and municipalities. In charter counties, variances are often decided by a hearing officer/zoning commissioner and appealed to the Board of Appeals.

Maryland Courts have defined the conditions under which a variance may be granted. A variance may be granted for cases in which the applicant faces a hardship due to features or circumstances that are unique and not generally shared by other property owners in the same zoning district. The unique circumstances must not be self-imposed or self-created by the applicant, and the granting of the variance must not confer special privileges that would be denied to other property owners in the same zoning district. The granting of the variance must confer only the minimum relief needed.

Administrative Adjustments

In order to streamline the development process, in non-charter counties and municipalities the legislative body is permitted to authorize the planning director or another designee to grant administrative adjustments from certain requirements in the zoning ordinance, such as height; setbacks; bulk; parking; loading, dimensional, and area requirements; and similar local requirements. In order to do this, however, the legislative body must develop criteria and procedures for, and limitations to, these administrative adjustments, working in consultation with both the planning commission and the board of appeals.

Special Exceptions

Zoning categories generally include uses permitted by right and uses permitted by special exception. A special exception is a land use that is permitted subject to specific conditions in the ordinance. This makes it possible to allow uses where they are reasonable, but deny them where the specific conditions cannot be met. For non-charter counties and municipalities the Board of Appeals makes the final decision on special exception requests. For special exceptions in non-charter counties and municipalities, the new consistency definition applies and must be met before a special exception is granted.

In charter counties, special exceptions are often decided by a hearing officer/zoning commissioner and then appealed to the Board of Appeals.

Deliberation

Some boards will schedule a later time to deliberate on a case. If a later time is schedules for deliberation, the board must give notice of that deliberation time and date. Some board of appeals cases can last for several days and are often schedules over a period of weeks or months.

In some charter counties, a hearing officer hears a case before it goes to the board of appeals. For example, a hearing officer may hear a special exception case. If parties to that case are unsatisfied by the decision in that case, a party can appeal that decision to the board of appeals. In charter counties where a board of appeals is hearing a case on appeals, a party must file for an appeal within a certain period of time after a hearing officer rules.

Because of the quasi-judicial nature of the proceedings, a member of a board of appeals should not engage in ex parte conversation with any litigant in a case or any witness in the case. This means that a member should not discuss the case with a party or a witness outside of the actual board of appeals proceeding. Ex parte conversation could result in the case being overturned by a circuit court.

At the end of the case at a board of appeals, a member of the board, board staff or board counsel will prepare an opinion of the board which evidences the board's decision in the case and the reasons behind the decision. It is important that this opinion outline the factual basis for the board's decision so that the circuit court can properly evaluate the case if it is appealed.

Module Seven: Review Questions

1. In regards to Boards of Appeals, in Maryland, Charter Counties are:
 - A. All required to have Board of Appeals.
 - B. Not required to have Board of Appeals.
 - C. Are not required to have Board of Appeals but all have established them.
 - D. None of the Above
2. Because it is a quasi-judicial hearing, all of the proceedings of the Board of Appeals:
 - A. Are recorded.
 - B. Shall have a transcript of all proceedings.
 - C. Record the vote of each member on each question or the member's absence or failure to vote.
 - D. All of the Above.
3. In terms of Maryland Open Meetings Act (OMA) and Boards of Appeals, which of the following is not true?
 - A. Like any other public body, a board of appeals can conduct a closed session of the body for specified reasons under the Open Meetings Act.
 - B. A board of appeals must deliberate on a case that has been heard in open session.
 - C. Hearings of board of appeals are not subject to the Maryland Open Meetings Act (OMA).
 - D. The public does not have the right to testify at a board of appeals hearing.
4. When testimony is given by a witness before a Board of Appeals:
 - A. They must bring photos or other substantial evidence.
 - B. The witnesses must testify under oath.
 - C. Must have standing in the case being heard.
 - D. The witnesses cannot be related to anyone involved in the case.

Planning Commission, PlanningBoard and Board of Appeals Education Course

Developed pursuant to Section 1-206 of the Land Use Article, Annotated Code of Maryland.

