

# **TOWN OF RIVERDALE PARK BOARD OF CODE APPEALS RULES OF PROCEDURE**

## **Section 1. Establishment and Organization**

### 1.1 Establishment of Board

The Town Council established in Chapter 56 of the Riverdale Park Town Code a Board of Code Appeals for the Town of Riverdale Park to provide persons affected by certain administrative determinations by Town officials a means to appeal those decisions. The Town Council has vested in the Board of Code Appeals the responsibility to hear and decide appeals by persons aggrieved by certain administrative 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 Chapter 56 of the Town Code relating to the Board.

### 1.3 Organization

1.3.1 There shall be a Chairman of the Board. The Chairman shall be appointed by the Mayor and confirmed by the Town Council. The term of the Chairman shall be two years as provided in Section 56-1(A) of the Town Code.

1.3.2 The Chairman may appoint a Vice-Chairman from among the members of the Board.

1.3.3 There shall be an Executive Secretary to the Board who shall serve under the direction of the Chairman. The Town Manager shall designate the Executive Secretary.

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 the Board in session at the time, and administer or delegate to another member or the attorney to the Board the administration of all oaths.

1.3.5 In the absence of the Chairman and unless the Chairman previously has designated a Vice-Chairman, the 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 Executive Secretary shall provide the Board with such ordinances, plats, applications, other documents and information that may be requested by the Chairman.

1.3.8 Subject to these rules and the direction of the Chairman, the Executive Secretary 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 Board, and shall compile and maintain the necessary records and files of the Board.

1.3.9 During any period of absence of the Executive Secretary, the Chairman shall request the Town Manager 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 Executive Secretary or the Town Clerk in the Town Hall.

1.3.11 Any 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 Town Attorney shall serve as attorney to the Board, unless the Town Manager designates another attorney to serve in that role. In addition to other duties and responsibilities set forth in these Rules, the attorney to the Board shall attend all meetings and hearings of the Board and advise the Board on all matters of business before the Board.

1.3.13 The attorney to the Board shall prepare or review all resolutions and orders of the Board in connection with any appeal 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 Code 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 or given

by e-mail 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 in the same manner as notice is regularly given for all other Town public meetings.

2.5 All public hearings to be conducted by the Board shall be scheduled by the Executive Secretary, 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 two members. The affirmative vote of not less than two members of the Board 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 appeal, the matter or action must be approved by the affirmative vote of not less than two members who participated in the proceedings. Any matter or action not decided by the affirmative vote of at least the required two 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 Section 32-4 of the Town Code. 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 Section 32-4 of the Town Code, 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 or her 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, indicating 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 appeal shall contain a statement of the grounds forming the basis of such decision. The Executive Secretary shall notify the Town Council and Town Manager of all decisions and resolutions.

2.12 Unless changed by a motion approved by not less than two members of the

Board, 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 appeals
- 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 appeals 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 10 days from the decision appealed from unless a different time is specified by law. Each application shall be accompanied by such fee as is prescribed by the Town Council. 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.

3.1.1 Within three business days after the filing of an application for appeal the application shall be reviewed by the attorney to the Board and the Executive Secretary for a preliminary assessment as to whether the appeal falls within the Board's jurisdiction. An application for appeal shall not be deemed complete until the Board determines that it has jurisdiction to hear the appeal.

3.1.2 Within five business days after the filing of an application for appeal the Executive Secretary shall transmit the application and preliminary assessment to the Board, and advise the appellant that its appeal has been received and the date when the Board will review the appeal to consider whether the appeal is within the Board's jurisdiction.

3.1.3 The Board, on its own initiative within 15 business days after receipt of the application and preliminary assessment and prior to scheduling a hearing, may meet to consider whether the Board has jurisdiction to consider the appeal. The Board may dismiss an appeal due to lack of jurisdiction by the affirmative vote of at least two of its members.

The appellant will be notified of the Board's decision and, if the Board decides that it has jurisdiction, when a hearing will be held to consider the appeal.

3.1.4 A failure of the Board to dismiss an appeal under this paragraph does not preclude the Board from dismissing an appeal at a later stage of the proceedings.

3.1.5 An application for appeal shall be deemed complete for purposes of scheduling a hearing when the Board determines that it has jurisdiction under Paragraph 3.1.3 or 15 days after receipt of the application if the Board does not meet as provided in Paragraph 3.1.3.

3.2 Each application for appeal shall contain at least the following information:

3.2.1. Name of the applicant

3.2.2. Location of the subject property

3.2.3. A statement of the relief requested from the Board

3.2.4. A statement citing the specific basis for the appeal

3.2.5 A statement that the Board will not consider any basis for appeal that is not cited on the application

3.2.6. Names and addresses of all persons, if any, 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 persons to whom notice must be sent.

3.2.7. A copy of any order or decision from 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 for 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, and unless the Board dismissed the appeal under Paragraph 3.1.1. for lack of jurisdiction, the Executive Secretary shall fix a reasonable time (not more than 30 days from the filing date) for a hearing on the appeal, subject to the following procedures.

3.5.1 In any case 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 Executive Secretary shall post at Town Hall a notice containing the name of the appellant; an identification of the real property in question (if applicable); the date, time and place of the hearing; a brief statement of the error alleged which is subject to determination by the Board; and such other information as may be required by law.

3.5.2 The Executive Secretary shall give written notice of the time and place

of such public hearing, sent by first class mail to the appellant and to any other person required by law to receive such notice.

#### **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 for 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 15 days before the hearing. A request for postponement received by the Board less than 15 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, 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 Introduction of the appeal by the Chair
- 5.1.2 Appellant testimony and evidence, including witnesses called by the appellant
- 5.1.3 Town staff testimony and evidence, and incorporation of the file and

record provided by the staff into the record

5.1.4 Testimony and evidence by any other person or entity whose rights are impacted by the Appeal

5.1.5 Summary statements

5.1.6 Closing of the hearing

5.2 At any time Board members may address questions to staff, applicant, appellant, witnesses or any others present at the hearing as is deemed appropriate.

5.3 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 appeal, upon request, may cross-examine any witness testifying at the hearing of the matter. Any right of cross-examination not asserted in a timely manner is waived.

5.4 With permission of the Chairman, Board's attorney may address questions to staff, applicant, appellant, witnesses or any others present at the hearing as is deemed appropriate. Board's attorney also may provide advice and guidance to the Board as the Board and counsel deem appropriate.

5.5 All testimony at any hearing or proceeding involving an appeal shall be under oath.

5.6 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.

5.7 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.

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

5.9 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.

5.10 The Executive Secretary shall sequentially number all exhibits introduced by any party at a hearing. The Executive Secretary shall be responsible for maintaining the security of all exhibits introduced at a hearing.

5.11 The Executive Secretary shall arrange for all hearings before the Board to be

recorded in a manner, and be of sufficient quality, that will allow for accurate transcription in the event any party seeks judicial review of a decision of the Board. The Board shall provide a tape or digital recording of proceedings on appeals before the Board upon payment of such cost as determined by the Town Manager. 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. Decision**

6.1 The Board shall decide an appeal by resolution within 10 days following the close of the hearing.

6.2 The Board's decision shall be by majority vote.

6.3 The Board's decision shall be in writing and shall include findings of fact.

6.4 The Executive Secretary to the Board shall deliver a copy of the Board's decision to all parties to the hearing before the Board, and to the Town Manager and Town Council.

## **Section 7. Rehearings**

7.1 No rehearing of any hearing shall be held except for good cause shown on written motion filed not more than ten (10) days after the Board's decision on the appeal. 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, 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.

7.2 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.

7.3 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, in writing, may stipulate.

7.4 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.

7.5 If the request for a rehearing is granted, the Board's prior decision is withdrawn pending the rehearing. Within 10 days after the conclusion of the rehearing the Board shall

reissue or modify its prior decision by resolution.

## **Section 8. Miscellaneous**

8.1 Adoption and amendments to these Rules of Procedure may be made by unanimous vote of those present at any meeting of the Board following a public hearing.

8.2 The suspension of any rule of procedure may be ordered at any meeting by a unanimous vote of those present.