TALBOT COUNTY BOARD OF APPEALS

RULES OF PROCEDURE

As Amended: September 2007

BOARD OF APPEALS OF TALBOT COUNTY, MARYLAND

Resolution No. 101

A RESOLUTION TO RATIFY RULES OF PROCEDURE AS ADOPTED AND AMENDED BY THE TALBOT COUNTY COUNCIL GOVERNING PROCEEDINGS OF THE TALBOT COUNTY BOARD OF APPEALS

WHEREAS, Talbot County Code § 20-4 B provides that the Board of Appeals shall adopt rules of procedure governing its proceedings, which shall have the force and effect of law when approved by legislative act of the County Council; and,

WHEREAS, on April 16, 2007, the Board unanimously approved Resolution 100 to adopt "TALBOT COUNTY BOARD OF APPEALS RULES OF PROCEDURE," (hereinafter the "Rules") and forwarded the Rules to the Talbot County Council for review and approval as required by law; and,

WHEREAS, on July 24, 2007, the County Council adopted the Rules with amendment; and,

WHEREAS, Resolution 100 adopted by the Board of Appeals provided that, should the County Council change any proposed term, provision or rule, then, to the extent of any such change, the same shall be reviewed as changed, and approved by the Talbot County Board of Appeals before becoming effective.

NOW THEREFORE, BE IT RESOLVED, by the Board of Appeals of Talbot County, Maryland that:

1. The Rules attached hereto and incorporated by reference herein, as adopted by Resolution 100, and as adopted and amended by the County Council Resolution 139 shall be and are hereby ratified, as amended, as the official Rules of Procedure for the Talbot County Board of Appeals.

2. The provisions of Bill 1051, enacted by the County Council on September 26, 2006 as Chapter 20, Talbot County Code, to the extent the same may be considered, interpreted, or applied as Rules of Procedure of the Talbot County Board of Appeals, are hereby ratified, confirmed, and adopted.

3. This Resolution shall become effective immediately upon its adoption.

4. The Rules adopted herein are as follows:

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TALBOT COUNTY BOARD OF APPEALS RULES OF PROCEDURE

Rule 1. Definitions.

In these Rules of Procedure the following terms have the meanings indicated:

ADMINISTRATIVE APPEAL – a proceeding upon an application alleging error by an administrative official or by the Planning Commission in any final order, requirement, decision, or determination under this Code.

APPLICANT – a person who files an application.

APPLICATION – a claim or claims for relief by an Applicant, including special exceptions, variances, administrative appeals, or reasonable accommodations for the benefit of a disabled citizen.

APPROVAL – any relief the Board may grant upon an application, including a special exception, variance, or reasonable accommodation, and any relief granted upon an application for administrative appeal, including any license, permit, authorization, exemption, waiver, certificate, registration, or other form of permission issued by the County as a result of the administrative appeal.

BOARD – the Talbot County Board of Appeals.

CLAIM FOR RELIEF – all rights of the applicant to any approval from the Board with respect to all or any part of the transaction, or series of connected transactions, out of which the claim arose.

COUNCIL -- the Talbot County Council.

HEARING -- a quorum of the Board convened to consider an application.

MEETING -- a quorum of the Board convened for transaction of public business other than a hearing.

Rule 2. Adoption of Rules of Procedure.

A. Hearings.

The Rules of Procedure set forth in this chapter shall apply to all hearings before the Board.

B. Meetings.

The current edition of Roberts Rules of Order Newly Revised, shall apply to all meetings of the Board.

C. Policies.

The Board, by resolution, may adopt policies to implement these Rules of Procedure.

Rule 3. Organization

A. Officers.

The Board shall elect a chairperson and vice-chairperson annually at the first meeting of each calendar year. The Chairman shall preside at all hearings and meetings. The Vice Chairman shall preside in the Chairman's absence. If both the Chairman and Vice Chairman are absent the Board shall elect a Chairman pro tem.

B. Quorum.

Three members of the Board shall constitute a quorum. An application denied by less than three votes entitles the applicant to a rehearing before the full Board, unless waived prior to the hearing pursuant to sub-paragraph three (3) below. If less than five members of the Board convene to conduct a hearing, the Board shall open the hearing and advise the applicant on the record of the following:

(1) A majority vote of the full Board, three votes, is required to award relief;

(2) The applicant is entitled, upon request, to postponement of the hearing for lack of a full Board, at no expense to the applicant for re-advertising; and,

(3) The applicant is also entitled to proceed with the hearing, but in making that election the applicant waives the right to a rehearing before the full Board if the application is denied.

C. Legal Counsel.

The Board shall employ legal counsel to advise it and prepare its written decisions.

D. Secretary.

The Board shall appoint a Secretary to the Board whose office shall be located in the Department of Planning and Zoning. The Secretary to the Board shall perform official duties assigned by these Rules or by the Board.

Rule 4. Hearings and meetings.

A. Frequency.

The Board shall convene every Monday, if necessary, excluding legal holidays, and as dictated by the number of pending applications. At the call of the Chairman, the Board may convene such other times as the Chairman deems necessary and appropriate.

B. Location.

Regularly scheduled hearings and meetings will be held in the Bradley Meeting Room, South Wing, Courthouse, 11 N. Washington Street, Easton, Maryland, or at such other locations as may be convenient to the Board. If the Board designates another location for reasons of necessity, adequate public notice of the new location shall be posted or published.

Rule 5. Applications.

A. Forms.

All applications shall be filed on forms approved by the Board, provided by the Secretary to the Board, and shall be accompanied by the filing fee established by the Council.

B. Signature.

All applications shall be signed by the applicant under penalty of perjury. All requested information shall be provided or its absence satisfactorily explained. Applications failing to comply with this requirement will be deemed incomplete, will not be accepted for filing, and will be returned to the applicant with a brief description of the required but missing or incomplete information.

Rule 6. Filing and service.

A. Filing.

Applications, notices, statements, exhibits, and other papers (collectively "documents") filed with the Board of Appeals shall be filed with the Secretary to the Board.

B. Copies.

The applicant shall provide a sufficient number of copies as required by the application.

C. Service.

Every person filing any document with the Board shall serve a copy upon every other party of record and upon counsel to the Board. Service upon a party represented by counsel shall be made upon the party's counsel.

D. Manner.

Service shall be made by first-class mail, postage prepaid, addressed to parties of record as shown in the Board's file. All documents filed with the Board shall be accompanied by a Certificate of Service, signed by the party effecting service or his counsel, certifying that service has been made in accordance with this Rule.

E. Exhibits.

Copies of all exhibits offered or accepted into evidence at any hearing shall be provided to and served upon all other parties. All exhibits shall include an original for the record plus a copy for each Board member and the Board's counsel. In addition, one copy shall be served upon each party of record.

Rule 7. Statement of case.

The applicant shall provide a simple and complete narrative statement setting forth in full detail all facts upon which the applicant relies to support any claim for relief.

Rule 8. Continuances.

A. Generally.

A hearing that has been properly convened may be continued by the Board without re-advertisement if the Board announces at or before adjournment of the original hearing the date, time, and place at which the hearing is scheduled to resume.

B. Posting notice.

The Secretary to the Board will post the date, time, and place of all hearings on the Board's official website and on the bulletin board adjacent to the Bradley Meeting Room, South Wing, Courthouse, 11 N. Washington Street, Easton, Maryland.

Rule 9. Conduct of public hearings.

A. Open meetings.

All hearings and meetings shall be open to the public in accordance with the Maryland Open Meetings Act (State Government Article § 10-501 et seq.).

B. Recordings, transcripts.

Hearings and meetings shall be electronically recorded. Recordings shall not be transcribed except at the request and expense of the person making the request. A request for a transcript must be in writing, addressed to the Secretary to the Board and accompanied by a sufficient deposit as determined by the court reporter.

C. Minutes.

The Board shall have written minutes prepared to reflect each item that the Board considered, the action that the Board took on each item, and each vote that was recorded. Minutes shall be prepared as soon as practicable, but in no case more than 30 days after the hearing. State Government Article § 10-509, Md. Ann. Code, (Maryland Open Meetings Act) concerning Session Minutes and Contents applies to the Board. Minutes and tape recordings of any open session shall be available for public inspection and copying by any person.

D. Participation.

Any person may: (1) participate in any public hearing; (2) produce documents and other relevant evidence to support their position; (3) have witnesses summoned to provide testimony and produce documents or other relevant evidence; and, (4) represent himself, or be represented by counsel. Only one person for each side may question each witness unless otherwise permitted by the Board.

E. Record.

Testimony and exhibits, including exhibits that were offered but excluded from evidence, shall become part of the record. Originals may be withdrawn with the Board's permission by substituting an acceptable duplicate or photocopy.

F. Witnesses.

All witnesses shall first state their full name and mailing address for the record, and shall swear or affirm to testify truthfully under penalties of perjury. The Chairman, or his designee, will administer the oath.

G. Order of Presentation.

The order of presentation shall be as set forth in Section 20-17, Talbot County Code.

H. Evidence.

The rules of evidence in the Administrative Procedure Act, State Government Article § 10-213, Md. Ann. Code, apply in all hearings. A copy, modified to comply with the nomenclature of these Rules, is attached as Exhibit "A" and is incorporated by reference herein.

Rule 10. Closed sessions of Board.

The Board may meet in closed session as authorized by the Maryland Open Meetings Act, State Government Article § 10-508 (a), Md. Ann. Code.

Rule 11. Decisions of Board.

A. Form.

All decisions shall be in writing and shall contain findings of fact and conclusions of law. The decision shall be signed and dated by each member of the Board who participated in the hearing on the application. Dissenting opinions shall be similarly authenticated.

B. Time.

The Board shall render its written decision within 30 days after the close of the public hearing and shall furnish a copy to each of the parties or their counsel.

C. Date.

The decision shall be dated when the last Board member signs it. The time for noting an appeal runs from the date of the written decision.

Rule 12. Withdrawn or postponed applications.

A. Withdrawals.

An application may be withdrawn prior to the hearing by delivering written notice of withdrawal to the Secretary to the Board. An applicant withdrawing an application for a special exception or variance is precluded from filing another application for the same or substantially the same relief for six months from the date of withdrawal; provided, however, that the Board may, in its discretion, waive the six-month refiling prohibition for good cause shown upon a majority vote of the Board.

B. Postponements.

The Board may postpone hearings, in its discretion, upon request or upon its own motion. Persons obtaining a postponement shall pay all costs caused by the postponement, except when the postponement was required for lack of a full Board.

Rule 13. Time extensions.

A. Rules.

The Board may extend the time for compliance with these Rules, in its discretion, upon request or upon its own motion. Parties requesting or obtaining any such extension shall pay all resulting costs.

B. Approvals.

Some approvals include expiration dates or time limitations. The Board may grant one extension not to exceed the limits of the original approval, upon written application and after advertisement and public hearing. An applicant requesting an extension shall pay all costs.

C. Implementation.

The Board shall prescribe a time limit not to exceed 18 months in which an approval shall be implemented. Failure to obtain required building permits, zoning certificates, site-plan approval, or other necessary authorizations within the prescribed time voids the approval. The Board, upon written request before expiration of the initial time limit and for good cause shown, may extend the time to implement the approval for one like period.

Rule 14. Rehearings.

A. Special exceptions and variances.

No application for a special exception or a variance asserting the same or substantially the same claim for relief shall be received or heard by the Board for a period of one year following the date of the Board's original written decision; provided, however, that the Board, in its discretion, may waive the one-year refiling prohibition for good cause shown upon a majority vote of the Board.

B. Newly discovered evidence.

The Board, in its discretion, may grant a rehearing based upon newly discovered evidence that appears, if considered, to have a substantial bearing on the outcome of the application and which could not have been discovered in the exercise of due diligence prior to the hearing. Such a showing permits but does not require the Board to grant to a rehearing, and the Board's decision shall not be reversed except upon a showing of an abuse of discretion.

C. Requests.

Requests for rehearing shall be filed in writing (1) within 10 days of the date on which the Board formally discusses the merits of the application on the record, adopts a formal motion to decide the application, and orally announces its decision; or, (2) within 10 days of the date evidence is newly discovered. A party requesting a rehearing shall serve a copy of the request on all parties who participated in the hearing.

D. Fees.

The same fees apply to a rehearing as to the original hearing. The rehearing will consist of argument on the record and neither party shall be entitled to introduce additional evidence except upon written request establishing to the satisfaction of the Board that newly discovered evidence exists that (1) has a substantial bearing on the outcome of the application and (2) such evidence could not have been discovered in the exercise of due diligence prior to the hearing. Parties opposing the application shall be entitled to offer evidence to rebut or refute any newly discovered evidence offered at any rehearing.

E. Board.

A rehearing shall be heard by the same Board members who participated in the original decision. If any of those members are unavailable, a new member may participate in the rehearing after reviewing the electronically recorded or transcribed testimony and exhibits from the original hearing.

Rule 15. Open session public hearings.

A. Recording.

Persons desiring to videotape, televise, photograph, broadcast, or record a hearing or meeting of the Board shall submit a written request to the Secretary to the Board at least five (5) days prior to the date of the hearing or meeting. Any such activity may be permitted only with the prior consent of the Board and all parties to the proceeding.

B. Disruption.

The Chairman may request disruptive individuals to leave the hearing or meeting, and may have any disruptive individual who continues to interfere with the proceedings removed. Unless the Board, any of its members, or agents, act maliciously towards a disruptive person(s), the Board, its members and agents shall not be liable for having an individual removed under the provisions of § 10-507 of the Open Meetings Act.

Rule 16. Reimbursement of fees.

A. Advertising fees.

Advertising fees shall be reimbursed for applications that are withdrawn if time permits cancellation of the public notice of the hearing, but not otherwise. Filing fees are not subject to reimbursement except as noted below.

B. Filing fees.

Filing fees for administrative appeals shall be reimbursed to prevailing parties. . Filing fees shall not be refunded to any applicant for a variance or special exception.

Rule 17. Communications.

A. General.

The Board shall not consider any *ex parte* or private communication from any person or organization, whether oral or written, which may relate to the merits of any administrative appeal, special exception, or variance pending before the Board of Appeals. Any such communication must be noted in the record of the case and the parties shall be given an opportunity to comment thereon.

B. County staff.

Nothing contained herein shall preclude the Board of Appeals from obtaining any advice, counsel or assistance from County staff provided the staff or their department is not a party to or directly involved in a pending matter for which the advice, counsel, or assistance is sought.

Rule 18. Appeals.

A. General.

Any person who participated in the hearing who is aggrieved by a Board decision may file an appeal to the Circuit Court for Talbot County within 30 days of the Board's written decision.

B. Content of Notice.

Upon receipt of a copy of a Petition for Judicial Review from the Court the Secretary to the Board shall promptly prepare a written notice. The notice shall state:

(1) A petition for judicial review has been filed, the date of the filing, the name of the Court, and the civil action number; and;

(2) A party wishing to oppose the Petition must file a response within 30 days after the date the notice was mailed, unless the Court shortens or extends the time.

C. Mailing.

The Secretary to the Board shall promptly mail the notice and a copy of the Petition for Judicial Review to all parties and witnesses who participated in the hearing, including the appellant.

D. Certificate of Compliance.

Within 5 days after mailing, the Secretary to the Board shall file a Certificate of Compliance with the Court pursuant to Maryland Rule 7-202 (e) showing the date the Board's notice was mailed and the names and addresses of the persons to whom it was mailed. Failure to file the certificate of compliance does not affect the validity of the Board's notice

E. Notice to appellant.

The Secretary to the Board shall promptly notify the appellant in writing that he must order a transcript of the hearing(s) and make suitable advance arrangements to pay for transcription, preparation of the record, and processing the appeal.

F. Record.

The Secretary to the Board shall prepare the record as follows:

(1) Contents.

The record shall include:

(a) The application;

(b) All papers filed with the Board in connection with the application;

(c) An official transcript of all hearings, certified by the Secretary to the Board;

(d) All exhibits offered into evidence, indicating separately those admitted and those excluded; and,

(e) The Board's written decision.

G. Expenses.

Appellant shall request a transcript of the hearing(s) and make suitable arrangements to deposit or pay in advance all costs associated with transcribing the testimony, preparing the record, and processing the appeal. Transcription costs include the cost of the original

transcript, a copy for the Board, a copy for all parties who participated in the hearing who elect to participate in the appeal, including the County, and all other expenses for copying and postage. In addition, the appellant shall pay an administrative processing fee. Appellant's compliance with these requirements is a condition precedent to the Secretary to the Board's obligation to prepare the record.

H. Inspection.

Before submitting the record to Court the Secretary to the Board shall notify the parties that the record is available for their inspection.

I. Filing record.

The Secretary to the Board shall submit the original record to the Court and shall keep a complete copy of the record. The appellant shall pay the cost of copying the record.

Date of Introduction: September 17, 2007

VOTE:

Shortall	
Jones	
Moody	
Sun	–
Crothers	

ADOPTED:

Certified: _____
Christine Corkell, Secretary to the Board

I hereby certify that the foregoing Rules of Procedure were duly adopted by the Board of Appeals by Resolution 100, were forwarded to the Talbot County Council and duly approved, as amended, by Resolution 139 and that the Board of Appeals duly adopted the above Rules of Procedure, as amended, by Resolution 101.

Certified: _____
Christine Corkell, Secretary

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