

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2006 Legislative Session, Legislative Day No. : August 22, 2006

Bill No.: 1051 * AS AMENDED *

Expiration Date: October 26, 2006

Introduced by: Mr. Carroll, Mr. Duncan, Ms. Harrington, Ms. Spence

A BILL TO CODIFY THE COMPOSITION, JURISDICTION, AND PROCEEDINGS BEFORE THE TALBOT COUNTY BOARD OF APPEALS INCLUDING APPLICATIONS FOR SPECIAL EXCEPTIONS, VARIANCES, AND ADMINISTRATIVE APPEALS, REQUIREMENTS FOR NOTICE OF PUBLIC HEARINGS, REQUIREMENTS FOR POSTING OF PROPERTY, NOTICE TO ADJACENT PROPERTY OWNERS, PARTICIPATION IN PUBLIC HEARINGS, CONDITIONS, LIMITATIONS, AND RESTRICTIONS UPON APPROVALS GRANTED BY THE BOARD OF APPEALS, COMPLIANCE WITH APPROVALS, ABANDONMENT, REVOCATION, AND APPEALS FROM DECISIONS OF THE BOARD OF APPEALS, AND GENERALLY RELATING TO THE AUTHORITY, POWERS, PROCEEDINGS, AND RELIEF AWARDED BY THE BOARD OF APPEALS

By the Council August 22, 2006

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, September 19, 2006 at 2:00 p.m. at the Bradley Meeting Room, Talbot County Court House, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order Susan W. Moran
Susan W. Moran, Secretary

TALBOT COUNTY BOARD OF APPEALS

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SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 20 of the Talbot County Code entitled "BOARD OF APPEALS" shall be and is hereby adopted as set forth herein.

State law references: Board of Appeals, Art. 25A, § 5 (U), Md. Ann. Code.

County Charter: Article V, County Board of Appeals.

Chapter 20

BOARD OF APPEALS

§ 20-1. Definitions.

In this Chapter, the following words 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.

§ 20-2. Composition.

The Board of Appeals shall consist of five members and three alternates appointed by the Council for three-year terms. The Board shall elect a chairperson and vice-chairperson annually at the first meeting of each calendar year. An alternate member shall act in the place of an absent or disabled Board member. Members of the Board may receive such compensation as deemed appropriate by the Council and may be removed by the Council for malfeasance in office upon written charges and after public hearing.

§ 20-3. Jurisdiction.

A. General.

The Board shall have authority to hear and decide only such of the following matters as the Council has or may specify from time to time by ordinance enacted separately from this chapter:

- (1) An application for a special exception.
- (2) An application for a variance; however, the Board may not grant any variance that would
 - (a) authorize a use not otherwise permitted in the zone, or
 - (b) expand or extend an existing non-conforming use.
- (3) An application for administrative appeal concerning:
 - (a) Issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, authorization, exemption, waiver, certificate, registration, or other form of permission;
 - (b) Issuance of any administrative or adjudicatory order; or,
 - (c) Assessment of any special benefit tax.
 - (d) A final decision by the Planning and Zoning Commission concerning major subdivisions and commercial and industrial site plan review.
 - (e) Reasonable accommodations for the benefit of disabled citizens.

(f) Determination of zoning district boundaries.

B. Limitation.

This section does not authorize the Board to hear or decide any of the foregoing matters unless, prior to the application, the Council shall have adopted separate enabling legislation authorizing the Board to do so.

§ 20-4. Proceedings.

A. Subpoenas and oaths.

The chairperson, or in his absence the vice-chairperson, may issue subpoenas to compel attendance of witnesses and production of documents and other relevant evidence, administer oaths and take testimony.

B. Rules of procedure.

The Board shall adopt rules of procedure governing its proceedings, which shall have the force and effect of law when approved by legislative act of the Council.

C. Rules of evidence.

The Board shall adopt rules of evidence governing its proceedings, which shall have the force and effect of law when approved by legislative act of the Council.

D. Records.

The Board shall keep minutes and, where appropriate, transcripts, voice recordings and other records on matters coming before the Board showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, all of which shall be a public record filed in the Planning Office.

E. Legal counsel.

The Board may appoint its own attorney within budgetary limitations established by the Council.

§ 20-5. Forms and fees.

An application shall be submitted in writing on forms provided by the Board and accompanied by the filing fee as established by the Council. An application that does not contain an appropriate application form, filing fee, and accompanying material required by § 20-7 below shall not be accepted for filing and shall be returned with the required, but missing or incomplete, material identified.

§ 20-6. Applications – in general.

A. Special exceptions and variances.

Applications for a special exception or a variance may be filed by any person, entity, or government agency with any financial, contractual, or proprietary interest in the affected property. Applications filed by one other than the owner of the property must be filed with the owner's written consent.

B. Administrative appeals.

(1) General.

Applications for administrative appeal may be initiated by any person aggrieved by a final order, requirement, decision, or determination of an administrative official, department, or commission. An appeal from the grant or denial of an administrative variance shall be by an application for administrative appeal.

(2) Time for filing.

Applications for administrative appeal shall be filed within 30 days of the date of final order, requirement, decision, or determination, unless separate legislation establishes a different period.

(3) Stay.

An application for administrative appeal shall automatically stay all further proceedings to enforce compliance with the order, requirement, decision, or determination, and shall automatically stay all further subdivision, site-plan, and related development reviews. There shall be no automatic stay when, in the judgment of the official having administrative authority to decide the question, a stay would cause immediate peril to life or property. A stay shall not limit the County's ability to obtain appropriate injunctive or other relief from a Court.

C. Planning Commission.

Applications for review of any final order, requirement, decision, or determination of the Planning Commission shall be by written statement and oral argument based solely on evidence submitted and received in the proceedings before the Planning Commission.

§ 20-7. Accompanying materials.

A. Special exceptions.

An application for special exception shall be accompanied by the following materials:

- (1) Survey plats, site plans, or other accurate drawings showing property boundaries, dimensions, area, topography, and frontage, and the dimensions of all existing and proposed structures and their locations measured from the nearest property lines.
- (2) Plans, architectural drawings, photographs, elevations, specifications, or other detailed information depicting fully the exterior appearance of existing and proposed construction for special exception use, including parking, access, exterior lighting, and signs.
- (3) A statement explaining in detail how the special exception is to be operated, including hours of operation, number of anticipated employees, occupants and clientele, traffic impact, and any special equipment, conditions, or limitations that the applicant proposes.
- (4) A copy of the official zoning map showing a one-thousand (1,000) foot radius surrounding the subject property and other information to indicate the use and general conditions of existing improvements on adjacent properties.
- (5) Names and addresses of adjacent property owners as required by this chapter.
- (6) If the applicant is not the owner or the authorized agent of the owner, in addition to the owner's written consent, a copy of the lease, rental agreement, or contract to purchase by which the applicant's claims the right to file the application.
- (7) All documents, records, and exhibits that the applicant intends to introduce or rely upon at the public hearing.
- (8) A reference to each specific section of the County Code that authorizes the Board to hear the application and grant the requested relief.
- (9) Applications governed by State or federal laws, rules, or regulations shall provide the materials and information required by applicable State and federal standards.

B. Variances.

An application for a variance shall be accompanied by the following materials and information:

- (1) Survey plats, site plans, or other accurate drawings showing property boundaries, dimensions, area, topography, and frontage, and the dimensions of all existing and proposed structures and their locations measured from the nearest property lines.
- (2) Identification and description of all unique physical characteristics of the property for which the variance is sought, and information, photographs, maps, or other materials showing that these physical characteristics are not common to other property in the neighborhood.
- (3) Identification of the provisions of the County Code for which the variance is requested.

- (4) A description of how, if the Code requirement were applied to the property, its unique physical characteristics would create either extraordinary hardship or practical difficulty, and not mere inconvenience.
- (5) Other materials required by the separate, enabling legislation authorizing the application.
- (6) All documents, records, and exhibits that the applicant intends to introduce or rely upon at the public hearing.
- (7) Names and addresses of adjacent property owners as required by this chapter.
- (8) A reference to each specific section of the County Code that authorizes the Board to hear the application and grant the requested relief.
- (9) Applications governed by State or federal laws, rules, or regulations shall provide the materials and information required by applicable State and federal standards.

C. Administrative appeal.

An application for administrative appeal shall be accompanied by the following materials and information:

- (1) All documents and records upon which the application is based, including the final order, requirement, decision, or determination being reviewed.
- (2) A specific reference to each section of the County Code that authorizes the Board to hear the application and grant the requested relief.
- (3) Names and addresses of adjacent property owners as required by this chapter.
- (4) The following materials and information need not be submitted with the application but shall be submitted no later than 30 days prior to the public hearing:
 - (a) All documents, records, and exhibits that the applicant intends to rely upon at the public hearing.
 - (b) A summary of what the applicant expects to prove, including the names of applicant's witnesses, summaries of the testimony of expert witnesses, and the estimated time required for presentation of the applicant's case. All reports from experts shall be filed and served on all other persons who have entered an appearance in the proceeding at least 15 days prior to the public hearing.

§ 20-8. Service of application for administrative appeal.

Upon filing an application for administrative appeal the applicant shall serve a copy on the County department head, or chairman of any County commission or agency responsible for interpretation, administration, and enforcement of the ordinance, rule, or regulation involved in the application.

§ 20-9. Posting property.

A. Required.

The applicant shall post the property for which an application is pending in accordance with the requirements of this section.

B. Location.

The applicant shall post the property by erecting a sign furnished by the Board at least 15 days prior to the public hearing. The sign shall be located on the property, nearly centered between its two side property lines, and within 10 feet from the most traveled public road. If no public road abuts the property, the sign shall be located so that the public will most readily see it. Signs shall be posted conspicuously and continuously maintained upright, visible, and free from obstruction by vegetation or otherwise, through the conclusion of all public hearings.

C. Responsibility.

The applicant is responsible for and bears the burden of proof to establish, by affidavit or otherwise, full compliance with all posting requirements.

D. Sign return.

The applicant shall remove and return the sign to the Secretary within five calendar days after conclusion of the public hearing(s). The applicant shall pay a fine of fifty dollars (\$50) per calendar day for late return, and the full cost of repair or replacement for any damaged sign.

§ 20-10. Notice to adjacent property owners.

A. Adjacent properties.

The Secretary shall provide notice to owners of:

- (1) all contiguous properties;
- (2) all properties across any road or street; and,
- (3) all properties within 1,000 feet measured by any line of sight entirely over water.

B. Content.

The notice shall state:

- (1) that an application has been filed;
- (2) the name and address of the applicant;

- (3) the name and address of the property owner, if different;
- (4) the location of the property;
- (5) a summary of the requested relief; and,
- (6) the date, time, and place of the public hearing.

C. Mailing.

The notice shall be mailed by regular mail, postage prepaid, at least 30 days prior to the date scheduled for the public hearing. The notice shall be mailed to the property owners' addresses to which County real-estate tax bills are sent.

D. List.

The applicant shall furnish the Secretary with a complete, accurate, and verified listing of the tax maps, grids, and parcels, and the names and addresses of all property owners entitled to receive notice under paragraph "A" of this section.

E. Re-notification.

Re-notification of adjacent property owners under this section is not required for any hearing that is properly convened and continued in accordance with the requirements of this chapter.

F. Non-receipt.

Failure of a property owner to receive notice under this section shall not affect the public hearing or the action of the Board on the application.

§ 20-11. Notice of public hearing.

A. Content.

The Secretary shall schedule and provide public notice of the date, time, and place of the hearing on each application. The notice shall include the property address, a brief description of the property, a summary of the relief requested, and shall be published over the signature of the Secretary in a suitable format approved by the Board. The applicant shall bear the expense of publication.

B. Advertisement.

All public hearings shall be advertised once a week for two successive weeks in a newspaper of general circulation in the County, with the last advertisement published not more than 10 days prior to the date of the hearing.

§ 20-12. Site Visit.

A majority of the members of the Board of Appeals shall be required to visit the site before a public hearing. However, a decision of an appeal shall be decided upon the basis of the evidence of record.

§ 20-13. Contested applications.

An application becomes contested when any person, or any County agency, department, or commission files with the Board a "Notice of Intention to Participate."

A. County.

A County agency, department or commission shall file a "Notice of Intention to Participate" within 15 days after being served with a copy of the application.

B. Adjacent properties.

Any adjacent property owner receiving notice under § 20-7 may file a "Notice of Intention to Participate" which shall be filed within 15 days after receiving the notice of the application.

§ 20-14. Procedure for contested applications.

The following requirements apply to all contested applications before the Board:

A. Pre-hearing statement.

The applicant shall file original and 5 copies of a pre-hearing statement no later than 30 days prior to the public hearing and shall serve a copy on all parties of record. The statement shall include the following information:

- (1) Citation to the section of the County Code authorizing the Board to hear and decide the application.
- (2) Citations to all ordinances, rules, and regulations upon which the applicant relies.
- (3) All facts upon which the application is based.
- (4) All documentary evidence upon which the applicant relies.
- (5) A summary of all expert opinion to be offered.
- (6) The area of expertise and qualifications of all expert witnesses.
- (7) Identity of all witnesses who will testify; and
- (8) Estimated time for presentation.

B. Response.

County departments, commissions, agencies, or persons or associations intending to appear in opposition to an application, whether or not represented by counsel, must file a similar pre-hearing statement no later than seven days prior to the date of the hearing.

C. Public participation.

This section shall not be construed to limit the rights of individual members of the public to submit testimony during the hearing or to submit pertinent written materials at any time while the record remains open.

D. Non-binding.

The information submitted in compliance with this section shall be construed only as a statement of the party's intent to submit such information or to provide testimony from witnesses, but no parties are bound to introduce the same at the hearing.

E. Non-compliance.

Failure to comply with the requirements of this section may result in a postponement, continuance, dismissal of an application, refusal to accept documentary evidence, or prohibition of the testimony of a witness who is not identified.

F. Decision.

In any contested application the Board may request that the parties submit proposed findings of fact and conclusions of law. Additionally and without request, any party may submit proposed findings of fact and conclusions of law for consideration by the Board.

§ 20-15. Planning Commission.

A. Review.

All applications for special exceptions shall be referred to the Planning Commission and the Planning Officer or his designee for review and recommendation. Applications for variances shall be referred to the Planning Officer or his designee, but shall only be referred to the Planning Commission at the discretion and direction of the Board. Comments and recommendations shall be forwarded to the Board prior to the public hearing and shall be available for inspection and distribution to the public.

B. Amendment.

An applicant may not amend an application for special exception or variance after consideration by the Planning Commission or Planning Officer except upon the recommendation of the Planning Commission or Planning Officer, or with the consent of the Board prior to the public hearing.

§ 20-16. Public hearings.

On all applications the Board shall hold at least one public hearing at which any person may appear in person or through an agent or attorney. Public hearings shall be conducted in accordance with the Board's Rules of Procedure and the requirements of this Chapter.

§ 20-17. Order of presentation.

The order of presentation of evidence shall be as follows, with cross examination following all witnesses' direct testimony and examination by the Board of Appeals at any time:

- (1) Presentation of the official record of exhibits by the Board of Appeals, notation of any objections to any part of the record, and other preliminary matters;
- (2) Presentation of testimony and exhibits by the applicant;
- (3) Presentation of testimony and exhibits by County officials and staff;
- (4) Presentation of testimony and exhibits by other persons opposed to the application;
- (5) Rebuttal evidence by the applicant;
- (6) Sur-rebuttal by parties opposing the application;
- (7) Formal receipt into evidence of the record by the Board of Appeals; and
- (8) Closing statements by each side.

§ 20-18. Record.

The Board shall maintain a complete record of its proceedings, including all exhibits offered and accepted, minutes, decisions, and transcripts or voice recordings of all testimony.

§ 20-19. Burden of proof.

The applicant shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion, by a preponderance of the evidence, on all issues of fact.

§ 20-20. Decisions of Board.

Decisions of the Board shall comply with the following requirements:

A. Evidence of record.

All decisions of the Board shall be based solely upon the evidence of record.

B. Form and time.

Decisions of the Board shall be in writing, shall contain findings and conclusions, and shall be rendered within thirty (30) days from the date of the public hearing unless such time is extended by the Board.

C. Vote.

Three votes shall be required to grant an application. A denial of relief by less than three votes shall entitle the applicant to a rehearing at the applicant's expense before the full Board. 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 grant an application;
- (2) The applicant is entitled, upon request, to postponement of the hearing for lack of a full Board.
- (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.

D. Complete relief.

A decision on an application for administrative appeal involving the same parties or their privies is a final bar to any subsequent claim for relief upon the same application. Such a decision is conclusive as to all claims for relief that were decided in the original application and any other claim for relief that could have been asserted.

E. Standard conditions.

All approved applications shall contain standard conditions that:

- (1) The applicant and his successors are bound by the testimony and exhibits presented in support of the application and by the representations of the applicant's agents and attorneys to the extent they are set forth or incorporated by reference in the Board's decision; and,
- (2) The applicant and his successors consent to entry by the County and its agents at reasonable times, upon reasonable advance notice, to determine initial and ongoing compliance with the terms, conditions, restrictions, and limitations of the Board's approval.

F. Additional conditions.

- (1) The Board may prescribe additional conditions, restrictions, and limitations upon any approval. All approvals shall be implemented in accordance with, and subject to, such conditions, restrictions, and limitations. Violation of any such condition, restriction, or limitation shall be grounds for revocation of the approval.

(2) Approvals by the Board shall not preclude any County department, commission or agency, when appropriate, to add specific conditions or requirements not inconsistent with the Board's decision that are:

(a) Required to comply with any federal, State, or County law, ordinance, or regulation; or,

(b) Authorized by law to protect public or private property, or public health, safety, or welfare.

G. Mailing.

A copy of the Board's decision shall be mailed promptly to all persons who participated in the hearing.

H. Reconsideration.

The Board may reconsider its decisions upon its own motion or upon request of any party, provided such request is received not more than ten (10) days from the date of the hearing at which the Board reached and announced its decision, or within ten (10) days after discovering new evidence that was not previously available and that could not have been discovered in the exercise of reasonable diligence prior to the hearing. The Board may promulgate additional rules with respect to reconsideration and rehearing.

I. Inadequate information.

Whenever the Board determines that the information provided in connection with any application is inadequate to permit the Board to make a decision, the Board may request additional information or alternatively may decline to approve the application.

§ 20-21. Implementation.

A. Time limit.

The Board shall prescribe a time limit not to exceed 18 months in which an approval shall be implemented. The Board may, upon written request before expiration of the initial time limit and for good cause shown, extend the time for not more than one like period. Failure to implement the approval within the prescribed time voids the approval.

B. Amendment or modification.

Upon request of an applicant, successor, property owner, County department, or Planning Commission, the Board is authorized to amend or modify any approval, including the terms, conditions, or limitations imposed on an approval.

C. Compliance required.

An approval shall be implemented and maintained in compliance with all terms, conditions, restrictions, and limitations imposed by this Code or by the Board. Noncompliance shall be a violation of the approval and shall be cause for revocation of the approval.

D. Inspections.

An inspection shall be conducted by the appropriate County department to determine compliance with the requirements of this chapter and all terms, conditions, restrictions, and limitations, if any, imposed by the Board or by law upon the approval. Additional inspections may be conducted from time to time to determine ongoing compliance.

E. Vested rights.

Vested rights in an approval shall not attach where the applicant, successor, or holder is in violation of the applicable terms, conditions, restrictions, or limitations of the approval, or of the requirements of law in effect at the time of implementation.

F. Revocation.

The Planning Commission, any County department, or any adjacent property owner as defined in § 20-10 may file an application to revoke any approval for non-compliance with § 20-21 C. The Board shall schedule the application for a hearing, notify the property owner, provide public notice and conduct a public hearing on the application as set forth in this chapter and the Board's Rules of Procedure.

G. Effect of non-compliance.

The Board may revoke the approval upon a finding of non-compliance with the requirements of § 20-21 C. In lieu of revocation, the Board may modify or set such other or further terms, conditions, restrictions, or limitations upon the approval as it deems appropriate.

§ 20-22. Abandonment.

After public hearing, the Board may revoke a special exception or variance upon a finding that cessation of the use or variance, or activities constituting or necessary to the special exception, have ceased for a period of at least 12 months.

§ 20-23. Appeals from Board decisions.

Any person who participated in the hearing and is aggrieved by the decision may, within 30 days after the date on which the Board's written decision has been signed by all Board members, appeal the decision to the Circuit Court for Talbot County, and thereafter to the appellate courts of this State in accordance with the provisions of the Maryland Rules of Procedure.

SECTION TWO: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. 1051 having been published, a public hearing was held on Tuesday, September 19, 2006 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 N. Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

Read the third time.

ENACTED September 26, 2006 * AS AMENDED *

By Order *Susan W. Moran*
Susan W. Moran, Secretary

Spence -	Aye
Foster -	Aye
Duncan -	Aye
Harrington -	Aye
Carroll -	Absent