

DEPARTMENT OF PLANNING AND ZONING

RULES OF PROCEDURE FOR NONCONFORMING USE CONFIRMATIONS

The attached procedures are established pursuant to Section 100.0.H and Section 129.0.D of the Howard County Zoning Regulations, to guide the Nonconforming Use Confirmation public hearing and application process requirements identified in the Howard County Zoning Regulations.

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Date of Adoption



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Department of Planning and Zoning

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These procedures are adopted pursuant to the Howard County Zoning Regulations Section 100.0.H, Section 129.0.D and the Howard County Code, Title II, Subtitle 1 "Administrative Procedure Act." The procedures delineate the public hearing and application process for confirmation of the factual existence of a nonconforming use in accordance with Section 129.0.D of the Howard County Zoning Regulations ("Nonconforming Use Confirmation"). Any property owner ("Petitioner") may petition the Department of Planning and Zoning for a Nonconforming Use Confirmation. The Director of the Department of Planning and Zoning ("Director") or a member of the Department of Planning and Zoning staff authorized by the Director to preside ("Director's Designee") shall hold a public hearing on a Nonconforming Use Confirmation petition. In these Rules of Procedure, the Director or the Director's Designee shall be collectively referred to as Director. The Nonconforming Use Confirmation application and hearing process shall be administered by the Department of Planning and Zoning staff ("DPZ staff").

A. FILING OF PETITIONS

1. **PETITION APPLICATION FORM:** The Department of Planning and Zoning shall prescribe the content of petition applications and supporting materials. A Petitioner may obtain the petition application form from the Department of Planning and Zoning. The application shall be completed in full and signed by the Petitioner or an authorized agent. An application signed by an agent of the Petitioner shall be submitted with written authorization from the Petitioner authorizing the agent to act on behalf of the Petitioner. It shall be the Petitioner's responsibility to ensure that the petition application form is properly completed, that all information therein is correct, and that sufficient copies are provided. DPZ staff shall make a preliminary review of the petition application form and supporting materials upon its filing and shall permit the Petitioner to make corrections or to provide additional information that is necessary for the petition application to be accepted for processing.
2. **APPLICATION FEE:** The Nonconforming Use Confirmation process is subject to the fees and charges established in accordance with County Council Resolution No. 73-2021, as amended. In addition to the application fee, a public notice poster fee is assessed for every Nonconforming Use petition. The total fee amount is not required to be paid at the time the petition application is filed, but must be paid in full by the Petitioner at the time the public notice posters are received. The petition shall not be processed further by DPZ staff without the correct fee. Checks shall be made payable to the Director of Finance of Howard County.
3. **PETITION SPECIFICATIONS:** DPZ shall indicate the requirements for the petition application on the form, including, but not limited to, the number of copies and the submission procedure. DPZ shall not process the petition until these application requirements are met.
4. **AMENDMENTS TO THE PETITION:** The petition application may be amended any time until the public hearing date. However, when an amendment is made by the Petitioner which the Director determines significantly alters the substance of the petition, the Director shall require that the public hearing date be rescheduled, if necessary, such that the full public notice period can

be provided after the amendment and before the public hearing. In the event any re-posting is necessary due to such rescheduling, the Director may require the Petitioner to pay an additional fee for all required posters.

5. **SUBSTANTIVE PETITION CONTENTS:** A Nonconforming Use Confirmation petition shall include a written statement which demonstrates how the Nonconforming Use Confirmation request meets the criteria specified in Section 129.0.D of the Zoning Regulations.
6. **NONCONFORMING USE PLANS:** Petitions for Nonconforming Use Confirmations shall include copies of a plan. Plans for Nonconforming Use Confirmations shall include the following information at a minimum:
 - (a) Courses and distances of property lines
 - (b) Size of property
 - (c) North arrow
 - (d) Scale of plan
 - (e) Zoning of subject property and adjoining property
 - (f) Location, address, parcel or lot number of subject property
 - (g) Boundary of area and structures considered to be nonconforming
 - (h) Existing and proposed uses, structures, natural features, landscaping, number of parking spaces, driveways, and points of access on the subject property
 - (i) Location of well and private sewerage easement, if applicable
 - (j) Floor area and height of structures and other numerical values necessary for examination of the petition
 - (k) Any other information as may be necessary for full and proper consideration of the petition.

Nonconforming Use Confirmation plans should be drawn to scale; however, the Director may accept plans which provide sufficient information for evaluation by indicating dimensions and distances. Nonconforming Use Confirmation plans shall be drawn to scale. The Petitioner shall fold all plans to be no larger than 9 inches by 14 inches unless otherwise indicated on the petition application form.

7. **PUBLIC NOTICE POSTING:** The subject property shall be posted with a public notice poster or posters, indicating the place, time, date and topic of the public hearing.

DPZ staff shall prepare the posters and an Affidavit of Posting form which describes the method of securing the posters and the required posting period. The Petitioner shall pick up the posters and the Affidavit of Posting form, pay the required fees, and erect the poster. On the day of the public hearing, the Petitioner shall submit the Affidavit of Posting form, which shall be signed by the Petitioner.

The posters shall be continuously displayed on the property for a period starting from 15 days prior to the scheduled hearing date and ending 15 days after the hearing date, provided, however that when the Director finds that the Petitioner has made a good faith effort, and that DPZ staff has verified the initial posting, the Director may sanction substantial compliance with the public notice posting requirement for lesser periods. The Petitioner shall maintain the posters during the entire posting period. The Petitioner shall remove the posters from the property after the end of the posting period.

B. PUBLIC HEARING

1. **PLACE AND TIME OF HEARING:** Generally, public hearings will occur in a hybrid manner, both in-person at the Department of Planning and Zoning in the George Howard Building; Ellicott City, Maryland and remotely via virtual telepresence, unless another location or means is specified by the Director. The time of the hearing shall be as scheduled by the Director. The Director shall schedule the public hearing to permit sufficient time for the required public notice posting period. DPZ staff shall notify the Petitioner as to the hearing date, time, and place of the public hearing.

When a hybrid hearing occurs, the Petitioner shall appear in-person for the hearing at the George Howard Building or other physical location designated by the Director. The Petitioner's witnesses, counsel, consultants and any other interested parties may participate in the hearing either in-person or remotely via virtual telepresence.

If the Director determines a hybrid hearing to be impracticable, the Director or their designee may conduct the hearing entirely in-person or entirely remotely through virtual telepresence. If a hearing is conducted entirely remotely via virtual telepresence, the Petitioner shall also participate via virtual telepresence.

If an individual provides testimony, whether in-person or virtually, they shall remain available for cross-examination.

2. **PUBLIC ATTENDANCE:** The public is invited to attend all Nonconforming Use hearings held by the Department of Planning and Zoning by being either physically in the hearing room or participating through a virtual telepresence, as applicable.
 - a. **IN-PERSON ATTENDANCE:** An individual intending to testify while physically present in the hearing room shall write their name, address, telephone number and email address on the hearing attendance sheet provided.
 - b. **VIRTUAL TELEPRESENCE:** An individual intending to attend through virtual telepresence, shall register to participate through the virtual platform no later than 12:00PM the business day prior to the scheduled hearing and shall provide their name, address, telephone number and email address. An individual registered by the deadline herein may testify at the hearing.
3. **MAINTENANCE OF ORDER:** Persons in attendance may not engage in conduct, including visual demonstrations such as waving of placards, signs, or banners that disrupts the hearing or that interferes with the right of members of the public to attend, observe and hear the meeting. The Director may require the removal of disruptive persons, including by muting the person's microphone and turning off any video of the person, and may request police assistance to restore order. The Director may recess the hearing to restore order.
4. **RECORD OF HEARING:** DPZ staff shall record the hearing. This recording and any exhibits admitted into evidence during the hearing shall constitute the official record of the hearing and, together with the petition file and Decision and Order issued by the Director, shall be made available by DPZ staff for public review for a period as required by law.
5. **CONDUCT OF HEARINGS:** Public hearings shall be conducted in accordance with the following process:

- a. **PRELIMINARY MATTERS:** The Director states the Petitioner's name and the nature of the request. The Director provides his or her name and identifies DPZ Staff present at the hearing. A general review of the hearing procedures is explained to the Petitioner and all present at the hearing. The Director also explains the process and department of cross-examination questioning.
- b. **INCORPORATION OF PERTINENT LAWS:** The Director incorporates the appropriate regulations into the public record by reference. These regulations may include, but are not limited to, the Howard County Zoning Regulations, the Howard County Subdivision and Land Development Regulations, and the Administrative Procedure Act of the Howard County Code. The Director shall identify Section 100.0.H of the Zoning Regulations as amended from time to time. For Nonconforming Uses, the Director shall refer to and identify Section 129.0.D of the Zoning Regulations, as amended from time to time, and shall read this section verbatim into the public record.
- c. **RULES OF EVIDENCE:** Any evidence which would be admissible under the rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in Nonconforming Use hearings. The Director is not bound by the technical rules of evidence but will apply those rules so that probative evidence may be conveniently brought forth. The Director shall exclude immaterial evidence and may exclude unduly repetitious testimony and other evidence and may limit the number of witnesses and duration of their testimony when the testimony is cumulative in nature.

All testimony shall be directed to the Director presiding at the public hearing and not to other persons in attendance.

To allow all parties adequate opportunity to evaluate potential evidence and to facilitate the orderly progression of hearings, exhibits to be considered shall be submitted to DPZ no later than 12:00PM the business day prior to the scheduled hearing. DPZ staff will scan and make all exhibits submitted by the deadline prescribed herein available electronically. The Director shall state whether an exhibit submitted as evidence with testimony is accepted or rejected. All exhibits accepted by the Director shall be marked with the case number and an exhibit number by DPZ Staff and shall be held in the official record. Exhibits rejected by the Director either shall be marked with the case number and a notation indicating that the exhibit is rejected and held in the official record, or, if requested by the offering party, shall be returned to the offering party. The Director may reject any exhibit which is unreliable, irrelevant, or unduly repetitious of an exhibit previously accepted. Exhibits shall not be mounted and shall be folded or capable of being folded to a maximum size of 9 inches by 14 inches unless otherwise indicated on the petition application form.

- d. **OATH:** Prior to giving any testimony, a witness shall give his or her name and address and shall take the following oath which shall be stated verbatim by the Director: "Do you solemnly promise to speak truthfully in all the testimony you are about to give?"
- e. **ORDER OF PRESENTATION:**
 - 1. Introduction of Reports and Official Documents Pertaining to the Case by DPZ Staff.

2. Opening Statements.

3. Petitioner's Presentation.

(i) Direct examination of witnesses.

(ii) Cross examination of witnesses by the Opposition and by the Director.

(1) Individuals questioning the Petitioner's witnesses.

Any individual wishing to question the Petitioner's witness may do so after giving his or her name, home address, and, if appropriate, its location with reference to the property which is the subject of the hearing.

(2) Questioning.

Questioning shall be brief, shall pertain only to statements made by the witness, and shall not be preceded by statements or speeches. The questioning shall be interrogatory in nature and shall not be argumentative, accusatory, or defamatory nor include allusions about the personality or motives of the witness.

(3) Re-direct examination of Petitioner's witnesses.

(4) Re-cross examination of Petitioner's witnesses.

4. Opposition's Presentation.

(i) Direct examination of Opposition's witnesses.

(ii) Cross examination of Opposition's witnesses by the Petitioner and by the Director.

(iii) Re-direct examination of Opposition's witnesses.

(iv) Re-cross examination of Opposition's witnesses.

5. Petitioner's Rebuttal.

The Petitioner may present evidence to rebut any evidence produced by the Opposition but no new line of testimony may be introduced at this time.

6. Surrebuttal.

The Opposition may present evidence to rebut any evidence produced by the Petitioner, but no new line of testimony may be introduced at this time.

7. Petitioner's Summation.

8. Opposition's Summation.

f. **BURDEN OF PROOF:** The burden of proof is one of a preponderance of the evidence and is on the Petitioner to show by competent, material and substantial evidence that he or she is entitled to the relief requested and that the request meets all prescribed standards and

requirements.

- g. **OBJECTIONS TO TESTIMONY:** Objections shall be made on the record, and the Director shall rule to sustain or overrule any objection as received or as soon as practicable.
- h. **QUESTIONING BY THE DIRECTOR AND DPZSTAFF:** At any time during the hearing, the Director may ask questions relevant to an issue raised in testimony of DPZ staff, the Petitioner, the Opposition, or any person attending the hearing. Upon being recognized by the Director, DPZ staff may ask relevant questions of the Petitioner, the Opposition, or any person attending the hearing.
- i. **DIRECTOR'S ACTION:** If the Director requests additional evidence in order to make the proper decision, the Director may recess the case to receive the additional evidence at a later time. The Director may not consider any additional evidence from either side after the hearing is concluded and the record is closed; however, the Director, on personal initiative or in response to a request made in open session, may receive or require legal memoranda summarizing the presentations of the Petitioner or the Opposition. Before filing the Decision and Order, the Director may reopen a case to receive additional evidence, if the Director deems it essential in making the proper decision.

At the end of the presentation, the Director may grant or deny the petition by stating findings of fact and conclusions of law or may take the case under advisement for further deliberation and later decision. Cases that are not concluded at the initial hearing may be continued to a day and time announced by the Director immediately before the initial hearing is recessed. It shall not be necessary to re-post the property for a hearing that is continued to a stated day and time. Only individuals who signed the attendance sheet at the initial hearing will be permitted to testify at a subsequent hearing on the same case.

C. **DECISION AND ORDER**

1. **TIME PERIOD OF ISSUANCE:** Each case shall be decided, and a Decision and Order issued no later than 30 days after the hearing is concluded, unless the Director extends the time for good and sufficient reason.
2. **CONTENT:** The Decision and Order of the Director granting or denying the Nonconforming Use shall be in writing and shall be signed by the Director. This Decision and Order shall contain a summary of the hearing testimony, Findings of Fact, Conclusions of Law, and the final Order. A Decision and Order to grant the requested Nonconforming Use may contain conditions of approval which the Director believes are necessary to ensure that the Nonconforming Use is in substantial harmony with the general provisions of the Zoning Regulations and the criteria applicable to the Nonconforming Use.
3. **ACTIONS AND RECORDS:** When the Director has signed the Decision and Order, DPZ staff shall mail a copy to the Petitioner. Copies shall also be mailed to those persons in attendance at the hearing who specifically requested a copy. The Decision and Order shall be made a part of the public record of the proceedings on file in the case file maintained by the Department of Planning and Zoning as part of the official record of Howard County. For approved Nonconforming Use cases, the Director shall direct DPZ staff to amend the official Zoning Map to reflect the approved adjustment.

4. **VALIDITY:** Unless otherwise stated or conditioned by a more restrictive law or time period, a Nonconforming Use, if approved, remains valid indefinitely from the date of approval. A Nonconforming Use shall remain valid on the official Zoning Map, unless revised by succeeding Zoning Map amendments.
5. **REVISORY POWER:** Within 30 days after the Decision and Order is signed by the Director, the Director shall have revisory power and control over the Order only in the event the Director finds there is fraud, substantial mistake, inadvertence or irregularity in response to a written request for reconsideration which establishes fraud, substantial mistake, inadvertence or irregularity in the Nonconforming Use case. The Director shall respond to requests for reconsideration with a letter to all parties which shall state the Director's decision on the request.

D. APPEALS

1. **BOARD:** The Decision and Order of the Director in Nonconforming Use is appealable to the Howard County Board of Appeals in accordance with the Board of Appeals' Rules of Procedure. The Decision and Order of the Director in Nonconforming Use is appealable to the Howard County Zoning Board in accordance with the Zoning Board's Rules of Procedure. All appeals shall be on a *de novo* basis.
2. **APPEAL PERIOD:** Appeals must be filed not later than 30 days from the date the Decision and Order is signed by the Director.
3. **STAY OF ORDER:** If a valid appeal to a Nonconforming Use Decision and Order is filed, the Director may stay the Order for any good cause. A request for a stay shall be filed in writing to the Director. The Director shall respond to a request for a stay with a letter to all interested parties which shall state the Director's decision on the request.