



City of Annapolis

DEPARTMENT OF PLANNING AND ZONING

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CHRISTOPHER N. JAKUBIAK, AICP
DIRECTOR

December 27, 2024

MEMORANDUM

To: Planning Commission

From: Eric Leshinsky, Chief of Comprehensive Planning

Via: Christopher Jakubiak, Director

Re: Ordinance O-33-24: Appeals Process for Property Development in Annapolis

Attachments:

- O-33-24 First Reader
- O-33-24 Legislative Summary
- O-33-24 Fiscal Impact Report

SUMMARY

O-33-24 clarifies that a party's appeal to Circuit Court of a Planning Commission (or an Historic Preservation or Board of Appeals) decision does not stay (i.e. stop) all proceedings and project related work, unless ordered by the Court or required by State law. Presently Title 21 is not clear about this. The bill makes plain that when a Planning Commission decision is appealed to Circuit Court, a stay is not automatic.

The bill does not remove the rights of residents to appeal or to have their appeals heard during the planning or construction phases of a project, nor does the bill remove the City's authority to impose stop work orders or to file and process citations when a builder or developer violates the Code. Also, the bill does not affect stays which are in fact automatically imposed on a project when a decision is appealed to the Board of Appeals. To be clear, the provisions of this bill regarding stays relate only to appeals of decisions made by the Planning Commission, Historic Preservation Commission, or Board of Appeals to Circuit Court. These decisions of course are only made following the conduct of public hearings and establishing written findings.

ANALYSIS

Overview

The proposed legislation principally addresses the temporary stop on development, construction or other project work, called a “stay” when a planning and zoning decision is being appealed to Circuit Court. The legislation applies to appeals of the following types of Commission decisions: Major Site Design Plans, Planned Developments, and Adequate Public Facilities. In all cases, the legislation provides that stays are not simply automatic upon appeal to the Circuit Court, but instead they become effective when otherwise required by a State law or when ordered by the Court.

Another key provision of the legislation is that it sets a clear timeframe within which the City’s Board of Appeals must hold a hearing on an appeal—within 45 days of the filing date. This reduces the time, cost, and potential uncertainty of the process.

Impact of Legislation

The “stay” provisions of the legislation only address stays when matters are appealed to the Circuit Court, not to the City’s Board of Appeals. When someone appeals the Director’s decision (to approve a house plan, for example), the matter is taken up by the Board of Appeals and a stay is effective (because it is required by State law--the Land Use Article of the Annotated Code of Maryland). The stay remains effective during the time the appeal is heard by the Board. O-33-24 doesn’t change this.

The bill’s provisions addressing Board of Appeals timelines and procedures are a nod toward making citizen engagement with the Board less formal and less costly, so citizens might feel more able to represent themselves in the appeal procedures, or at least not unnecessarily incur significant legal fees. While the bill maintains the City’s stance that appeals are to be “on the record”—that is, they are to be decided based on the information / evidence available to the Director when the decision was made (not based on new evidence), the bill states that parties are not required to file written legal briefs and must have the opportunity to present verbally at a public hearing. The bill also clarifies what should constitute the “record” in an appeal case, which has been an issue causing unnecessary delay in at least one recent appeal.

These provisions also should lead to more streamlined and efficient operations with less public resources devoted by City professional and legal staff to managing procedures, writing, and rebutting legal briefs, and managing and scheduling meetings and legal conferences. Recall, when appeals are filed to the Board, they are filed because someone believes the Director (that is, the Department of Planning and Zoning) has made an error. The appellants are appealing a decision or action of the Director. So the City is always a party to an appeal before the Board of Appeals.

When appeals are filed, they can require considerable time and resources on the part of the Department and the Office of Law. The longer it takes to get to a decision making hearing, the more public and private resources are expended and the longer applicants and appellants are delayed in getting resolution. The bill says that the Board must hold a decision making hearing within 45 days of the appeal being filed, currently there is no timeline. In practice, the changes offered through the proposed legislation should translate into quicker appeals hearings and speedier decisions on appeals before the Board of Appeals for all parties. It may however, from time to time, delay actions on variances and special exceptions when the Board’s caseload is heavy.

Again, regarding “stays”, the bill eliminates automatic stays when the Planning Commission is appealed to Circuit Court. But a party to an appeal—for example, a party objecting to the Planning Commission’s decision on a Major Site Design Plan—can still petition the Court (the same Court to which the appeal is filed) to order that a stay be imposed. The Court then can decide whether a stay is warranted after weighing the matter.

Conclusion

Fair and efficient appeals are a cornerstone of a competent planning and zoning program. Automatic stays involving appeals of Planning Commission decisions however can lead to publicly approved projects being delayed indefinitely at considerable expense and in contravention of the Comprehensive Plan. The legislation would clarify that such stays are not automatic; they require a court order. The proposed legislation also sets the expectation that the City’s own zoning appeals procedures can be more friendly to residents—both appellants and applicants; to make it easier and less costly to participate in this part of the zoning process.

RECOMMENDATION

Based on the above analysis, the Department recommends approval of the proposed O-33-24.

1 **..Title**

2 **Appeals Process for Property Development in Annapolis** – For the purpose of eliminating the
3 temporary stop on development, construction or other project work, called a "stay," while a
4 Department of Planning and Zoning or Department of Public Works decision regarding building
5 and construction developments is being challenged in Circuit Court; and generally dealing with
6 the appeals process in Titles 17 and 21 of the City Code.

7 **..Body**

8 **CITY COUNCIL OF THE**
9 **City of Annapolis**

10 **Ordinance 33-24**

11 **Introduced by: Alderwoman Finlayson**

12 **Co-sponsor: Mayor Buckley, Ald. Schandelmeier**

13 **Referred to:**

14 Planning Commission

15 Economic Matters Committee

16 Rules and City Government Committee

17 **AN ORDINANCE** concerning

18 **Appeals Process for Property Development in Annapolis**

19 **FOR** the purpose of eliminating the temporary stop on development, construction or other
20 project work, called a "stay," while a Department of Planning and Zoning or Department
21 of Public Works decision regarding building and construction developments is being
22 challenged in Circuit Court; and generally dealing with the appeals process in Titles 17
23 and 21 of the City Code.

24 **BY** repealing and reenacting with amendments the following portions of the Code of the City
25 of Annapolis, 2024 Edition:

26 **17.48.300**

27 **21.22.120**

28 **21.24.130**

29 **21.30.020**

30 **21.30.030**

31 **21.30.040**

32 **21.56.110**

33 **22.30.010**

Explanation: ~~Strikethrough~~ indicates matter stricken from existing law.
Underlining indicates a change to the City Code.
Underlining & black - copyediting or reformatting of existing Code section
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1 **22.32.020**

2
3 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
4 **COUNCIL** that the Code of the City of Annapolis shall be amended to read as follows:

5
6 **Title 17 - BUILDINGS AND CONSTRUCTION**
7 **Chapter 17.48 - Nonresidential Property Maintenance**

8
9 **Section 17.48.300 Notice to correct—Appeal.**

10 ~~D. The decision of the Board in all cases shall be final; except, that any appellant or party~~
11 ~~directly aggrieved by a decision of the Board, within thirty days after the rendering of the~~
12 ~~decision, may appeal to the circuit court for the County. The findings of fact of the Board~~
13 ~~shall be conclusive, and judicial review shall be limited solely to errors of law and~~
14 ~~questions of constitutionality. The decision of the Board in any case on appeal shall be~~
15 ~~stayed pending a decision of the court.~~

16 **D. Appeals of Board Decisions.**

- 17 **1. The decision of the Board in all cases shall be final.**
- 18 **2. Any appellant or party aggrieved by the Board's decision may appeal to the**
19 **Circuit Court for Anne Arundel County within 30 days of the decision.**
- 20 **3. The Board's findings of fact shall be conclusive, and judicial review will be**
21 **limited to errors of law and questions regarding constitutionality.**

22
23
24 **Title 21 - PLANNING AND ZONING**
25 **Division II - Administration and Enforcement**
26 **Chapter 21.22 - Site Design Plan Review**

27 **Section 21.22.120 Appeal.**

28 A. Any appeals of a decision of the Planning and Zoning Director must be made to the
29 Board of Appeals in conformance with the provisions of Chapter 21.30.

30 B. An appeal from a decision of the Planning Commission under this chapter shall be made
31 to the Circuit Court of Maryland for Anne Arundel County.

- 32 **1. Notice of the appeal shall be provided to the Director of Planning and Zoning at**
33 **least five calendar days before the appeal is filed with the court.**
- 34 **2. An appeal filed pursuant to this section does not stay the action from which the**
35 **appeal is taken unless provided by state law or an order entered by a court of**
36 **competent jurisdiction.**

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3 **Title 21 - PLANNING AND ZONING**
4 **Division II - Administration and Enforcement**
5 **Chapter 21.24 - Planned Developments**
6

7 **Section 21.24.130 Appeals.**

8 ~~Appeal of Planning Commission Decision. An appeal from a decision of the Planning~~
9 ~~Commission under this chapter shall be made to the Circuit Court of Maryland for Anne Arundel~~
10 ~~County.~~

11 **Appeal of Planning Commission Decision.**

- 12 1. An appeal from a decision of the Planning Commission under this chapter shall be
13 made to the Circuit Court for Anne Arundel County.
- 14 2. Notice of the appeal shall be provided to the Director of Planning and Zoning at
15 least five calendar days before the appeal is filed with the court.
- 16 3. An appeal filed pursuant to this section does not stay the action from which the
17 appeal is taken unless provided by state law or an order entered by a court of
18 competent jurisdiction

19
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21 **Title 21 - PLANNING AND ZONING**
22 **Division II - Administration and Enforcement**
23 **Chapter 21.30 - Appeals**

24 **Section 21.30.020 Procedures.**

25 A. ~~**Appeal Procedures.** An appeal may be taken within thirty days after the decision~~
26 ~~complained of, by filing with the Planning and Zoning Director a notice of appeal~~
27 ~~specifying the grounds of the appeal, said grounds are, including but not limited to, an~~
28 ~~arbitrary and capricious act by the Director, an abuse of discretion by the Director, and~~
29 ~~erroneous finding of fact by the Director, or an error of law by the Director. The Director~~
30 ~~shall, at the sole expense of the appellant, forthwith transmit to the Board of Appeals all~~
31 ~~of the papers constituting the record upon which the action appealed from was taken.~~

- 32 1. An appeal may be filed within 30 days of the decision being challenged.
- 33 a. The notice of appeal shall be submitted to the Director of Planning and
34 Zoning.

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1 **b.** The notice shall clearly state the grounds for the appeal, which may
2 include, but are not limited to, any arbitrary or capricious actions by the
3 Director, abuse of discretion by the Director, erroneous findings of fact, or
4 errors of law made by the Director.

5 **2.** The Director shall, at the appellant's sole expense, promptly send to the Board of
6 Appeals all documents that make up the record upon which the appealed action
7 was based.

8 **B. Review Procedures.**

9 1. **Notice and Hearing.** ~~The Board of Appeals shall select a reasonable time and~~
10 ~~place for the hearing of the appeal. Notice of the hearing shall be given in~~
11 ~~accordance with the notice requirements set forth in Sections 21.10.020(B) and~~
12 ~~21.10.020(C).~~

13 a. A hearing shall be conducted expeditiously to determine the facts, apply
14 the criteria of this code to the facts presented at the hearing, and decide
15 the appeal.

16 b. The Board of Appeals shall select a reasonable time and place for the
17 appeal hearing, not later than 45 days from the date of the appeal filing
18 or at the board's immediate next regular hearing date following.

19 c. Parties to the appeal shall be heard in person at the hearing and shall not
20 be required to file or respond to legal briefs within the proceedings of an
21 appeal.

22 d. Notice of the hearing shall be given in accordance with the notice
23 requirements set forth in § 21.10.020(B) and § 21.10.020(C).

24 2. **Standing.** ~~If the appellant is not the applicant, the applicant shall have party status~~
25 ~~and be permitted to participate fully in the appeal. ~~in the manner described in~~~~
26 ~~Subparagraph 4.~~

27 3. **Burden of Proof.** ~~The hearing before the Board of Appeals shall be on the record.~~
28 ~~The appellant shall have the burden of proof.~~

29 a. The hearing before the Board of Appeals shall be on the record, meaning
30 the record shall comprise the information available to the Director at the
31 time the decision being appealed was made.

32 b. The appellant shall have the burden of proof.

33 4. **Decision.** ~~The Board of Appeals shall reach its decision within forty days from~~
34 ~~the date of the hearing. The Board may affirm or reverse, wholly or in part, or~~
35 ~~may modify the order, requirement, decision or determination as ought to be made~~

1 or the Board may issue a new order, requirement, decision or determination. To
2 that end, the Board has all the powers of the Planning and Zoning Director.

3 a. The Board of Appeals shall reach its decision within 40 days from the date
4 of the hearing.

5 b. The Board may affirm or reverse, wholly or in part, or may modify the
6 order, requirement, decision or determination as ought to be made, or it
7 may issue a new order, requirement, decision or determination.

8 c. To carry out these functions, the Board is vested with all the powers of the
9 Director of Planning and Zoning.

10 5. **Notice of Decision.** The Director of Planning and Zoning ~~Director~~ shall give
11 notice of the decision of the Board of Appeals in accordance with the
12 requirements of ~~Section 21.10.020.E~~ § 21.10.020(E).

13 6. **Record of Decisions.** The Director of Planning and Zoning ~~Director~~ shall
14 maintain records of all actions of the Board of Appeals relative to appeals taken
15 pursuant to this section.

16 **Section 21.30.030 Stay pending appeal.**

17 An appeal to the Board of Appeals pursuant to the preceding section shall stay all actions on
18 the application which is the subject of the appeal.

19 **Section 21.30.040 Judicial Review.**

20 ~~Any person aggrieved by any decision of the Board of Appeals may file a petition for~~
21 ~~judicial review of that decision to the Circuit Court of Anne Arundel County.~~

22 A. Any person aggrieved by any decision of the Board of Appeals may appeal that decision
23 to the Circuit Court for Anne Arundel County.

24 B. Notice of the appeal shall be provided to the Director of Planning and Zoning at least
25 five days before the appeal is filed with the court.

26 C. An appeal filed pursuant to this section does not stay the action from which the appeal is
27 taken unless provided by State law or an order entered by a court of competent
28 jurisdiction.

1 **Title 21 - PLANNING AND ZONING**
2 **Division IV - Overlay District Regulations**
3 **Chapter 21.56 - Historic District**
4 **Article I - Approval of Exterior Changes**
5

6 **Section 21.56.110 Appeals.**

7 ~~Any person or persons, firm or corporation aggrieved by a decision of the Commission has~~
8 ~~a right of appeal to the Anne Arundel County Circuit Court and a further appeal to the Court of~~
9 ~~Special Appeals of Maryland. Appeal requests must be filed within thirty days from the date of~~
10 ~~the Commission decision.~~

11 A. Any person or persons, firm or corporation aggrieved by a decision of the
12 Commission has a right of appeal to the **Circuit Court for Anne Arundel County** and
13 a further appeal to the Court of Special Appeals of Maryland.

14 B. Appeal requests must be filed within 30 days from the date of the Commission
15 decision

16 C. An appeal filed with the court pursuant to this section does not stay the action from
17 which the appeal is taken unless mandated by State law or pursuant to an order
18 entered by a court of competent jurisdiction.

19
20
21 **Title 22 - ADEQUATE PUBLIC FACILITIES**
22 **Chapter 22.32 - Appeals**
23

24 **Section 22.32.010 Appeals.**

25 ~~An appeal from the decision of the Director of Planning and Zoning to approve or deny an~~
26 ~~application for a Certificate of Adequate Public Facilities shall be made to the Board of Appeals~~
27 ~~in conformance with the provisions of Title 21, Chapter 21.30.~~

28 A. An appeal regarding the decision made by the Director of Planning and Zoning to
29 approve or deny an application for a Certificate of Adequate Public Facilities shall be
30 submitted to the Board of Appeals in accordance with the provisions outlined in Title 21,
31 Chapter 21.30.

32 B. An appeal to the Board of Appeals pursuant to the preceding section shall stay all actions
33 on the subject application, but said stay shall apply only during the Board of Appeals
34 review.

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1 C. Any person aggrieved by a decision of the Board of Appeals under this section may
2 appeal that decision to the Circuit Court for Anne Arundel County.

3 D. Notice of the appeal shall be provided to the Director of Planning and Zoning at least five
4 calendar days prior to any appeal being filed with the circuit court.

5 E. An appeal filed with the circuit court pursuant to this section does not stay the action
6 from which the appeal is taken unless mandated by State law or pursuant to an order
7 entered by a court of competent jurisdiction.

8
9 **~~Section 22.32.020 Stay pending appeal.~~**

10 ~~An appeal shall stay all proceedings in furtherance of the action appealed.~~

11
12 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
13 **ANNAPOLIS CITY COUNCIL** that this ordinance shall take effect upon passage.

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LEGISLATIVE SUMMARY

O-33-24

Appeals Process for Property Development in Annapolis

This summary was prepared by the City of Annapolis Office of Law for use by members of the Annapolis City Council during consideration of the legislation.

BILL SUMMARY

O-33-24 standardizes the process for appealing City decisions regarding building plans in both Title 17 and Title 21 of the City Code. Title 21 addresses planning and zoning issues, which pertains to the planning phase of a development. Title 17 focuses on buildings and construction, covering the phase during which the plans are executed.

BACKGROUND

The appeals process in the City Code varies based on when it was established. Some sections are vague, while others are very detailed.

Typically, the requirements for appealing a decision regarding property development within the City are as follows:

1. Individuals aggrieved by a City decision must first appeal to the City's Board of Appeals. During this time, all development and construction must halt until the Board issues decision.
2. Those dissatisfied with the Board of Appeals' decision may appeal to the Circuit Court but must notify the Planning and Zoning Director about the appeal.

While the City does not require development to stop during the Circuit Court appeal, the Court may impose a halt. Furthermore, although developers may continue construction at their own risk, they may be required to undo any work if the Court rules against them.



LEGISLATIVE SUMMARY

O-33-24

Appeals Process for Property Development in Annapolis

DETAILS

This section deal pertains to property that's under construction.

Section 17.48.300 - Nonresidential Property Maintenance

The provision requiring construction to stop if City decisions are appealed to Circuit Court is removed.

These sections deal with City approval of different types of property development.

Section 21.22.120 - Site Design Plan Review

Appeals requirements are added consistent with other sections.

Section 21.24.130 - Planned Developments

Appeals requirements are added consistent with other sections.

Section 21.30.020 - Appeals of Variances, Special Exceptions, Planned Developments, etc.

Subsection A is reformatted to current legislative writing style.

Subsection B adds criteria for the appeals process to make it similar to other sections' appeals process and requirements for burden of proof. The section is reformatted and copyedited to current legislative writing style.

Section 21.30.030 - Stays regarding Variances, Special Exceptions, Planned Developments, etc.

There are no changes. This section requires *stays* (a stop work order on development) during appeals to the Board of Appeals.



LEGISLATIVE SUMMARY

O-33-24

Appeals Process for Property Development in Annapolis

Section 21.30.040 - Judicial Review Requirements regarding Variances, Special Exceptions, Planned Developments, etc.

Appeals requirements are added consistent with other sections above.

Section 21.56.110 - Historic District

The stay provision is added, and the section is copyedited.

Section 22.32.010 - Recreational Facilities

Appeals requirements are added consistent with other sections above.

Section 22.32.020 - Recreational Facilities

The requirement that proceedings must be stayed during all appeals has been removed.



FISCAL IMPACT NOTE

Ordinance: O-33-24

Title: Appeals Process for Property Development in Annapolis

Date: December 9, 2024

While appeals to the Board of Appeals are not a frequent occurrence, when they are filed, they can require considerable time and resources on the part of the Department of Planning and Zoning and Office of Law.

The sections of O-33-24 that address appeal procedures and timing, can be expected to save the City thousands of dollars in professional, legal, and administrative staff time if, in practice, they translate into quicker hearings and speedier decisions on appeals. The City will be able to use the time saved to focus on the many other projects before them.

The sections of O-33-24 which address stays during appeals at Circuit Court would be fiscally neutral.

Prepared by Chris Jakubiak, Planning and Zoning Director and Katie Connolly, Budget Manager