



City of Annapolis

Board of Appeals
Department of Planning and Zoning
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January 8, 2025

To: The Mayor and Members of the Annapolis City Council

From: The Annapolis Board of Appeals

Subject: Comments on Proposed Ordinance 33 - 24

Thank you for the opportunity to comment on proposed ordinance 33-24.

The primary focus of the ordinance is the circumstances under which an appeal from a decision of the Planning Commission or from a decision of the Board of Appeals will result in a stay of the development activity which is the subject of the appeal. The ordinance does not change the current law which stays all actions on the application which is the subject of the appeal during the pendency of the appeal before the Board.

We support the decision to leave in place the automatic stay during appeals to the Board. To eliminate it would open the possibility that the action appealed from, such as a demolition permit, could occur during the appeal, thus rendering the appeal moot.

Regarding other proposed amendments to the ordinance, the Board believes that some changes in procedures before the Board merit comment.

Under proposed section 21.30.030B.1.b, the Board must set a date for hearing an appeal within 45 days from the date of filing an appeal or at the next regular meeting of the Board. An appeal cannot, as a practical matter, proceed until the Director designates the record and makes it available to the parties. In some cases, it may take the Director a period of time to designate the record. The requirement for advance publication of notice of Board meetings also affects scheduling appeals hearings as does the pendency of earlier filed appeals. The “next regular meeting” requirement is potentially in conflict with current law which requires that applications and appeals be heard by the Board in the order received. **The Board asks that the Council consider amending this provision so that the 45 day deadline runs from the date that the Director designates the record rather than from the date of filing of the appeal and deleting the reference to the next regular meeting.**

The reference in proposed subsection 21.30.020 B.1.a. may create the impression that hearings on appeals involve factual testimony by witnesses. Generally, they do not because appeals are decided “on the record.” See, proposed subsection 21.30.020.B.3.a. Under that subsection, the Board determines, based exclusively on the record developed by the Director, whether the appellant has met its burden of demonstrating error by the Director. The single exception to this is that there is often a dispute between the

Director and the appellant as to what constitutes the record. The Board may hear evidence on that point. The Board finds the definition of what constitutes the record contained in proposed subsection 21.30.020.B.3.a. very helpful in this regard.

The Board asks that the Council consider amending proposed subsection 21.30.020.B.1.a. to read as follows: “A hearing shall be conducted expeditiously to apply the criteria of this code to the evidence presented at the hearing, and decide the appeal.”

Proposed subsection 21.30.020.B.1.c. provides:

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

We note that the Board always allows an appellant to orally argue his/her case. The Board also usually offers the parties a chance to submit written briefs because they can be helpful in reaching a prompt decision in an appeal. But, such written submissions or briefs are not required. The recently adopted Standard Operating Procedure for remote participation in in-person and virtual meetings provides the capability for parties to an appeal to appear remotely. We note that the language of the proposal could be read to require in-person participation. It could further be read to require that all hearings in an appeal be in-person. Those requirements could unnecessarily delay a decision in an appeal.

Proposed subsection 21.30.020.B.2. provides:

If the appellant is not the applicant, the applicant shall have party status and be permitted to participate fully in the appeal.

We note that applicants already have full party status under Board Rule 5.2.a.

Finally, proposed subsection 21.30.020.B.4.a. requires the Board to render a decision within 40 days of the hearing on an appeal. The Council should be aware that appeals often involve multiple hearings. The first one is usually to resolve disputes as to what constitutes the record. We sometimes also have a separate hearing on a motion to dismiss - for example if the Director contends that the appeal was not timely filed. Compliance with the 40-day deadline from the date of the last hearing is not a problem.

We thank the Council for its support and interest in our work.

Bob Gallagher, Chair