

CHAPTER 1: SCOPE

1.1. Scope of Rules.

These rules and regulations govern all proceedings under:

- (a) Section 50-41 of the Montgomery County Code; and
- (b) any other relevant provisions of the Montgomery County Code.

1.2. Definitions.

1.2.1 *Applicability.*

In these rules and regulations, the following terms shall have the meanings indicated. Other terms shall have the meaning indicated in the Board's Rules of Procedure.

1.2.2 *Definitions*

(a) *Hearing Officer.*

"Hearing Officer" means an individual designated by the Board to conduct hearings or proceedings.

(b) *Board.*

"Board" means the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission.

(c) *Citation.*

"Citation" means a citation issued for violation of a Planning Board Action, or a law or regulation under the Board's jurisdiction.

(d) *Enforcement Agent.*

"Enforcement Agent" means the Planning Director or designee(s) responsible for determining compliance with a Planning Board Action or with any law that the Board administers.

(e) *Party.*

"Party" means an Enforcement Agent or a Respondent.

(f) *Planning Director.*

“Planning Director” means the Director of the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission.

(g) *Respondent.*

“Respondent” means the recipient of a Citation.

1.3. Filings with Office of the Chairman. All documents permitted or required to be filed with the Board shall be filed at the Office of the Chairman.

1.4. Form and Service of Documents

1.4.1 Captions.

Each document filed with the Board shall contain a caption that sets forth:

- (a) the title of the action;
- (c) the citation number or the docket number assigned to the proceeding; and
- (c) a brief descriptive title of the document that indicates its nature.

1.4.2 Signature

(a) Every document of a Party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State. Every document of a Party who is not represented by an attorney shall be signed by the Party.

(b) The signature constitutes a certification that:

- (i) the signatory has read the document;
- (ii) to the best of his or her knowledge, information and belief, there is good ground to support it; and
- (iii) it is not interposed for delay.

(c) *Signature - Sanctions.*

If a document is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this rule, it may be stricken, and the action may proceed as though the document had not been filed.

1.4.3 *Service.*

This subsection applies to all documents, except for citations, that are required to be served on other parties. If service is required on a Party represented by an attorney, service shall be made on the attorney unless service on the Party is ordered by the Board or the Hearing Officer. Each document shall be accompanied by a signed certificate of service that specifies the date and manner of service.

1.5. **Computation of Time.**

1.5.1 *In general.*

- (a) In computing any period of time prescribed by these rules and regulations, the day of the act, event, or default after which the designated period of time begins to run is not included.
- (b) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays are counted.
- (c) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays are not counted.
- (d) The last day of the period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

1.5.2 *Mailing.*

When mail is used for service of any document (other than a citation) on an opposing Party, the opposing Party has 3 additional days within which to take any action or make any response required or permitted by these rules and regulations.

1.6. **Appearances.**

1.6.1 *In general.*

Persons are permitted to participate in enforcement proceedings as provided in this section.

1.6.2 *Individuals.*

An individual may appear:

- (a) on his or her own behalf; or

- (b) by an attorney licensed to practice in the State of Maryland.

1.6.3 *Businesses, etc.*

A business, non-profit organization, or government agency may appear:

- (a) by an attorney licensed to practice in the State of Maryland; or
- (b) to the extent allowed by law, by any officer, employee, or authorized agent.

1.7. Records.

1.7.1 *Hearing Officer to keep.*

The Hearing Officer shall maintain files containing all documents, evidence, and other items and information submitted to or produced by a Hearing Officer or the Board during the course of a proceeding.

1.7.2 *Files to be public.*

These files shall be available for public inspection in accordance with the Maryland Public Information Act.

CHAPTER 2 PRE-HEARING PROCEDURES

2. 1. Citation.

2.1.1 *Proceedings commenced by citation.*

All proceedings shall be commenced by the issuance of a citation on a form approved by the Board.

2.1.2 *Contents.*

The citation shall contain:

- (a) the name of the Respondent;
- (b) the Violation with which the Respondent is cited, including a reference to the specific law in question;
- (c) the place and approximate time of the Violation;
- (d) the amount of any Civil Fine;

- (e) information on whether the offense is a repeat offense;
- (f) the manner and time in which the Respondent must either:
 - (i) pay the specified fine; or
 - (ii) request a hearing on the Violation;
- (g) any Stop Work Order or Corrective Order, including the time within which the Violation, if ongoing, must be abated;
- (h) a statement advising the Respondent of the right to a hearing on the Violation and that failure to act in the manner and time indicated in the citation may result in a default decision and an order entered against the Respondent.

2.1.3 *Service.*

A citation may be served on a Respondent by mail or hand delivery.

2.1.4 *Filing.*

A copy of the served citation must be filed with the Planning Director.

2.2. Compliance with Citation.

2.2.1 *In general.*

A Respondent may comply with the Citation by paying any Civil Fine indicated on the citation and taking any required Correction Action in the manner and time directed by the citation.

2.2.2 *Effect of payment.*

If the Civil Fine is paid, no hearing or appeal will be allowed. Any Corrective Action required in the Citation must be taken within the time specified in the Citation in order to avoid a further Citation.

2.3. Pre-Hearing Requests to Reschedule.

2.3.1 *Hearing Officer may grant.*

On written request to the Hearing Officer and for good cause shown, the Hearing Officer may postpone a scheduled hearing for a brief period or reschedule the hearing.

2.4. Consolidation.

In the interest of convenient, expeditious, and complete determination of cases involving the same or similar issues or the same parties, the Hearing Officer may consolidate two or more citations for adjudication at one hearing.

2.5. Discovery.

2.5.1 In general.

- (a) On timely, written request, any Party is entitled to receive from the opposing Party:
 - (i) a list of the names of witnesses intended to be called; and
 - (ii) copies of documents intended to be submitted into evidence.
- (b) To be timely, the request must be received by the opposing Party at least 10 days before the scheduled hearing.
- (c) The Party to whom the request is directed shall serve a written response within 7 days after the request is received.

2.5.2 Limitations.

- (a) Pre-hearing discovery is limited to the matters enumerated in subsection 2.5.1 (a).
- (b) All other applications or motions for discovery, including depositions on oral examination, shall be made to the Hearing Officer at the start of the hearing, and the Hearing Officer may order further discovery as he or she finds appropriate.

2.5.3 Supplemental responses.

If a Party has responded to a request for discovery and, before the hearing, obtains further responsive information, the Party shall supplement the response promptly.

2.5.4 Sanctions.

If any Party fails to properly respond to a lawful discovery request or order or wrongfully refuses to answer questions or produce documents, the Hearing Officer may take appropriate action, including, but not limited to, precluding evidence or witnesses of the offending Party or striking the pleadings or defenses of that Party.

CHAPTER 3 HEARING PROCEDURES

3.1. Scheduling; Notice.

3.1.1 In general.

If a Respondent timely requests a hearing, the Planning Director shall:

- (a) set the date, time, and place for the hearing before an Hearing Officer; and
- (b) provide the parties with at least 20 days' notice of the hearing.

3.1.2 Contents of Notice.

The notice shall state:

- (a) the date, time, place, and nature of the hearing;
- (b) the right of a Party to be represented, at the Party's own expense, by an attorney or, if permitted by law, other representative;
- (c) the right of a Party to call witnesses and submit documents; and
- (d) that failure to appear for the scheduled hearing may result in an adverse action against the Party.

3.2. Timing of Hearing.

3.2.1 In general.

Absent a showing of good cause, the hearing date shall be within 90 days of the citation's service.

3.2.2 Accelerated hearing.

If the Respondent waives the 20 days' notice and requests an accelerated hearing, the Planning Director may assign the case for immediate hearing, on appropriate notice to the Enforcement Agent and opportunity for the Enforcement Agent to appear.

3.2.3 Preliminary hearing to determine if Stop Work Order should be continued.

The recipient of a Stop Work Order may request a preliminary hearing to determine whether the Stop Work Order should remain in place pending a hearing on the merits. When a preliminary hearing is requested, the Hearing Officer shall schedule the hearing for the earliest possible time. The Hearing Officer shall continue the Stop Work Order if he or she finds that there is prima facie evidence of a Violation and that

the public health, safety, or welfare is threatened or may be threatened because of the Violation.

3.3. General Nature of Hearing.

3.3.1 *Orderly but informal*

All hearings shall be conducted in an orderly but informal manner.

3.3.2 *Expedition.*

(a) Hearings shall proceed with all reasonable expedition and, to the extent practicable, shall be held at one place and continue without suspension, except for brief recesses, until concluded.

(b) The Hearing Officer may grant brief adjournments, for good cause shown and consistent with the requirements of expedition.

3.4. Record.

The Hearing Officer shall arrange for a stenographic or mechanically-created record of all hearings.

3.5. Order of Proceedings.

Subject to modification by the Hearing Officer for good cause, all hearings shall be conducted in the following order:

- (a) presentation and argument of motions preliminary to a hearing on the merits;
- (b) presentation of opening statements, if any;
- (c) Enforcement Agent's case in chief;
- (d) Respondent's case in chief;
- (e) Enforcement Agent's case in rebuttal;
- (f) Respondent's case in rebuttal;
- (g) Respondent's closing argument; and
- (h) Enforcement Agent's closing argument.

3.6. Oaths.

3.6.1 *In general.*

Before testifying, a witness is required to declare that he or she will testify truthfully.

3.6.2 *Administration.*

The declaration shall be by oath or affirmation, administered:

- (a) in the form of Maryland Rule 1-303; or
- (b) in special circumstances, in some other form or affirmation calculated to impress on the witness the duty to tell the truth.

3.7. General Duties and Powers of Hearing Officer.

3.7.1 *General duties.*

The Hearing Officer has the duty to:

- (a) conduct a fair and impartial hearing;
- (b) take all necessary action to avoid delay in the disposition of proceedings; and
- (c) maintain order.

3.7.2 *General powers.*

The Hearing Officer has all powers necessary to these ends, including the power to:

- (a) administer oaths and affirmations;
- (b) issue discovery orders and rule on objections to those orders;
- (c) receive evidence;
- (d) regulate the course of the hearing and the conduct of the parties and their representatives;
- (e) hold conferences for simplification of issues or for any other proper purpose;
- (f) question witnesses;

- (g) consider and rule on all procedural and other motions, including requests for adjournment; and
- (h) make and file recommended decisions.

3.8. Ex Parte Communications.

A Hearing Officer may not receive any ex-parte communication from any Person, other than communications limited to ministerial matters.

3.9. Impartiality.

3.9.1 *In general.*

A Hearing Officer should recuse him- or herself from any hearing in which his or her impartiality might reasonably be questioned, including any instances in which the Hearing Officer:

- (a) has a Personal bias or prejudice about a Party;
- (b) has Personal knowledge of disputed evidentiary facts in the proceeding;
- (c) served as a lawyer in the matter in controversy or was professionally associated with another Person while that Person served as a lawyer in the matter in controversy;
- (d) has been a material witness to the matter;
- (e) has a financial interest in the subject matter in controversy or in a Party to the proceeding;
- (f) has any other interest that could be substantially affected by the outcome of the proceeding; or
- (g) knows that his or her spouse or dependent child:
 - (i) is serving as a lawyer in the matter in controversy or is professionally associated with another Person who is serving as a lawyer in the matter in controversy;
 - (ii) is likely to be a material witness in the proceeding;
 - (iii) has a financial interest in the subject matter in controversy or in a Party to the proceeding; or

- (iv) has any other interest that could be substantially affected by the outcome of the proceeding.

3.9.2 *Motion to recuse.*

- (a) A Party may request that a Hearing Officer recuse him-or herself for good cause shown. The request shall be ruled on by the Hearing Officer in the proceeding.
- (b) If the Hearing Officer denies the request, the Party may obtain a brief adjournment to seek review by the Board.

3.9.3 *Notice of recusal.*

When a Hearing Officer recuses him-or herself from a proceeding, he or she shall do so on the record and shall notify the Chairman of the Board of the recusal.

3.9.4 *Replacement.*

On recusal of a Hearing Officer, the Chairman of the Board shall appoint another Hearing Officer to conduct the hearing.

3.10. Maintaining Discipline.

3.10.1 *Power of Hearing Officer.*

After a warning, the Hearing Officer may bar any Person, including a Party or an attorney or other representatives of a Party, from continued participation in a hearing if that Person refuses to comply with the Hearing Officer's directions or behaves in a disorderly, dilatory, or obstructionist manner.

3.10.2 *Review by Board Chairman.*

- (a) Any Person so barred may promptly apply to the Board Chairman for a review of the Hearing Officer's action.
- (b) Unless the Board Chairman orders that further proceedings be stayed pending a decision on the application, the hearing may continue at the Hearing Officer's discretion without the Person's participation.

3.11. Amendments to Citation.

3.11.1 *Administrative Judge may allow.*

If doing so will facilitate the determination of a controversy on the merits, the Hearing Officer may allow appropriate amendments to a citation, subject to conditions necessary to avoid injustice or unfair surprise to a Party.

3.11.2 *Conformance to evidence.*

When issues reasonably within the scope of a citation, but not expressly raised by the citation, are tried by the express or implied consent of the parties:

- (a) the issues shall be treated in all respects as if they had been raised by the citation; and
- (b) the citation may be amended at any time as necessary to make it conform to the evidence.

3.12. Burden of Proof.

The Enforcement Agent has the burden of proof in establishing by a preponderance of the evidence that the Respondent has committed the Violation charged in the citation.

3.13. Evidence.

3.13.1 *In general.*

Except as otherwise provided by these rules, formal rules of evidence and trial procedures do not apply.

3.13.2 *Right to submit.*

On a material issue of fact, a Party is entitled to:

- (a) call witnesses;
- (b) offer evidence, including rebuttal evidence;
- (c) cross-examine any witness that another Party calls; and
- (d) present summation and argument.

3.13.3 *Scope*

The Hearing Officer:

- (a) may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs;

- (b) may not exclude evidence solely on the basis that it is hearsay, but may give hearsay evidence the weight that it deserves under the circumstances of the case;
- (c) shall give effect to a privilege recognized by law;
- (d) may take official notice of a fact that is judicially noticeable or that is general, technical, or scientific and within the specialized knowledge of the Hearing Officer; and
- (e) may exclude evidence that is:
 - (i) incompetent;
 - (ii) irrelevant;
 - (iii) immaterial; or
 - (iv) unduly repetitious.

3.14. Interlocutory Appeals.

3.14.1 *Leave required.*

Interlocutory appeals from rulings of a Hearing Officer may be filed to the Board only if leave to file has been obtained from the Hearing Officer.

3.14.2 *Criteria for leave.* Leave to appeal will not be granted except on a showing that:

- (a) the ruling complained of involves substantial rights and will materially affect the final decision; and
- (b) a determination of its correctness before hearing ends is essential to serve the interests of justice.

3.14.3 *Board's discretion.*

In its discretion, the Board may refuse to hear an interlocutory appeal, even though leave to appeal was obtained from the Hearing Officer.

3.14.4 *Effect.*

Unless the Hearing Officer orders otherwise, an interlocutory appeal does not stay the proceeding or extend the time for the performance of an act.

3.15. Stipulation in Lieu of Hearing.

3.15.1 *Stipulation authorized.*

At any time before the Hearing Officer issues a recommended decision and order, the parties may enter into a stipulation in lieu of further hearing.

3.15.2 *Required elements.*

The stipulation shall state at a minimum all material facts.

3.15.3 *Optional elements*

The stipulation may also contain:

- (a) the amount of the Civil Fine to be paid, if any; and
- (b) the Corrective Action to be required, if any.

If the amount of the civil fine to be paid and the corrective action to be required are not stipulated to, within 15 days of filing the stipulation the Parties must file written arguments with the Board concerning the amount of the civil fine and any corrective action that should be required.

3.15.4 *Filing*

The Enforcement Agent shall file the stipulation with the Hearing Officer and the Board, and serve a copy on the Respondent. The filing of the stipulation stays any deadlines for discovery, hearing, or issuance of an order in the proceeding before the Hearing Officer. Within 10 days of the stipulation being filed, the Hearing Officer shall transmit to the Board a recommendation of whether the Board should approve the stipulation and serve a copy of the recommendation on the Parties.

3.15.5 *Board review.*

Within a reasonable time after it receives the stipulation and the Hearing Officer's recommendation, the Board shall schedule a public hearing to consider the proposed stipulation. At the public hearing, the Board may determine whether to allow testimony by any Person other than the Respondent or the Enforcement Agent. The Board may accept the stipulation in its entirety, modify it, or reject it. If the Board modifies the stipulation, within 10 days of the Board's decision the Respondent may request that the alleged Violation be rescheduled for hearing before a Hearing Officer. If the Board rejects the stipulation, the Planning Director must reschedule the alleged Violation for a hearing before a Hearing Officer. Neither the stipulation nor any statements made about it may be used as evidence before the Hearing Officer.

3.16. Recommended Decisions and Orders.

3.16.1 *Hearing Officer to prepare.*

The Hearing Officer shall prepare a recommended decision and order within 30 days of completion of a hearing.

3.16.2 *Recommended decision.*

The Hearing Officer's decision shall set forth:

- (a) findings of fact and conclusions of law; and
- (b) the Hearing Officer's reasons for its findings on all material issues.

3.16.3 *Recommended order.*

If the Hearing Officer recommends that the charges in the citation be upheld, the Hearing Officer shall prepare a recommended order that sets forth a proposed penalty and any necessary corrective action.

- (a) *Recommended Civil Fine.*

The Hearing Officer may propose any Civil Fine permitted by law, and is not limited to the Civil Fine in the citation initiating the enforcement proceeding

- (b) *Recommended Correction Action.*

If the Hearing Officer finds that the Respondent failed to comply with a Planning Board Action, the Hearing Officer must order compliance with the Planning Board Action. Where the Hearing Officer finds that trees have been cut in Violation of a forest conservation plan or the forest conservation law, the Hearing Officer must include proposed corrective measures in his or her recommended decision.

3.16.4 *Filing.*

The recommended decision and order shall be filed with the Chairman of the Board and served on all parties. Upon receipt, it must be posted on the Planning Board's website.

3.16.5 *Finality.*

If timely exceptions are not filed, the Hearing Officer's recommended decision and order may be adopted by the Board without further action.

CHAPTER 4 PLANNING BOARD REVIEW

4.1 Exceptions.

Any Party may file written exceptions with the Board challenging the Hearing Officer's findings of fact and conclusions of law, the amount of fine recommended, or the corrective actions recommended. Any Person may file exceptions concerning the amount of fine or corrective actions recommended. Any Person may request that the Board modify any corrective order or fine recommended by the Hearing Officer, including by proposing to modify the plan that the Respondent violated.

4.2 Filing and Service.

The exceptions must be filed within 30 days after the recommended decision and order is delivered or mailed to the parties, except as specified under subsection 4.5.1. A copy of the exceptions must be served on all parties.

4.3 Contents.

The exceptions must contain:

- (a) a concise statement of the issues presented;
- (b) specific objections to the findings of fact and conclusions of law set forth in the recommended decision, if any; and
- (c) specific objections to the amount of the civil fine or corrective actions in the recommended decision, if any; and
- (c) arguments that present clearly the points of law and facts relied on in support of the position taken on each issue.

4.4 Answer.

- (a) Within 20 days after the exceptions have been served on a Party, that Party may file an answer opposing exceptions.
- (b) The answer must comply with the requirements of subsection (a) of this section for contents and service.

4.5 Transcripts.

A Party may apply in writing for a written copy of the transcript of the hearing.

- (a) within the period allowed for filing exceptions; or
- (b) if later, within 30 days after the other Party has filed exceptions.

4.5.1 Extension of time.

If an application for a transcript is timely made, the time within which exceptions must be filed is extended to 20 days from the date when the transcript is delivered or mailed to the Party who requested it.

4.5.2 Fee.

The Board may charge the Person who requested the transcript a fee for the transcript, including the expense of transcription.

4.6 Applications to Extend Time.

An application to extend the time for filing exceptions or answers for any reason must be:

- (a) made in writing to the Chairman of the Board; and
- (b) must demonstrate good cause for the requested extension.

4.7 Review to be on Record.

4.7.1 In general.

When exceptions have been filed, the Board shall consider the entire matter on the basis of the record before it.

4.7.2 Record elements.

For this purpose, the record comprises:

- (a) the citation;
- (b) the transcript of the hearing;
- (c) all briefs filed and exhibits received in evidence; and
- (d) the Hearing Officer's recommended decision.

4.7.3 Witness credibility.

The Board shall give due regard to the Hearing Officer's opportunity to judge the credibility of any witnesses.

4.7.4 Additional evidence or argument.

If the Board considers it necessary or appropriate, it may:

- (a) order further testimony or evidence to be taken or submitted; or
- (b) order oral argument on any or all of the questions raised on appeal.

4.8 Public hearing

The Board shall hold a public hearing to consider whether to adopt a recommended decision and any exceptions to it.

4.8.1 Notice

At least 10 days before the hearing, the Planning Director must provide public notice of the hearing.

4.8.2 Arguments

Unless otherwise ordered by the Board, the Enforcement Agent and the Respondent shall have up to 10 minutes to present arguments to the Board. Other Persons may file a written request to speak at the public hearing with the Office of the Chairman. Requests to speak must be served on the Enforcement Agent and the Respondent.

4.9 Decision and Resolution.

The Board may adopt the Hearing Officer's recommended decision in whole or in part, or remand the matter for further proceedings, and must issue a Resolution memorializing its decision. The Board's issuance of a Resolution constitutes final agency action.

4.10. Reconsideration.

4.10.1 Petition

Any Party may petition the Board to reconsider a Resolution within ten days after the date of mailing of the Resolution. Any request for reconsideration must be in writing, and be filed with the Planning Director. The Chairman may waive the filing deadline for good cause shown. Any Party who requests reconsideration must serve a copy of its petition on every other Party. The petition for reconsideration must specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.

4.10.2 *Decision to Reconsider.*

The Chairman must schedule any petition for reconsideration for Board consideration as soon as practicable. A motion to reconsider may be made only by a member of the Board who voted in the majority on the decision that is subject to reconsideration. The motion passes if it receives the vote of a majority of the Board members present and voting and each member voting on the motion participated in the decision to be reconsidered or read the record of the proceeding. A petition to reconsider (a) does not require notice to the public or the Parties other than by publication on the Board agenda, and (b) may be taken without the appearance or testimony of the Parties. If the Board votes to reconsider, the reconsidered Resolution is void.

4.10.3 *Notice of Hearing*

After the Board votes to reconsider a Resolution, the Chairman must promptly schedule a public hearing. At least 10 days before the hearing, the Planning Director must notify all Parties of: (a) the Board's decision to reconsider the Resolution; (b) the date of the hearing; and (c) a reasonable summary of the reasons for reconsideration.

4.10.4 *Hearing*

The Board must conduct a public hearing as scheduled. The scope of the hearing must include the reason the Board cited for reconsideration of the Resolution and any other issue that the Board deems to be related.

ARTICLE 5 DEFAULT PROCEEDINGS

§ 5-01. Acts Constituting Default.

A Respondent is in default if:

- (a) the Respondent fails to pay the prescribed fine or to request a hearing within the time specified on the citation; or
- (b) having requested a hearing, the Respondent fails to appear at the hearing.