



Commissioners of Leonardtown

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J. HARRY NORRIS
Mayor

LASCHELLE E. MILLER
Town Administrator

Commissioners of Leonardtown
LEONARDTOWN BOARD OF ZONING APPEALS

41660 Courthouse Drive
June 10, 2008 @ 5:00 p.m.

Attendees: Dr. Herbert Winnik, Chairman
Lanny Lancaster, Vice Chair
Dr. William Icenhower, Member
Darren Meyer, Member
Joan Ritchie, Member

Also in attendance were: DeAnn Adler, Plans Reviewer; Teri Dimsey, Recorder. An official list of attendees is on file at the Town Hall.

Chairman Winnik called the meeting to order at 5:00 p.m. and then took up the first item of business.

APPROVAL OF MINUTES – April 22, 2008

Chairman Winnik entertained a motion to approve the April 22, 2008 minutes.

The Members noted that they had not received some of the materials. The Member then proceeded to review and discuss the minutes in detail.

Member Ritchie moved to strike out on page 2 last line of second paragraph “A draft of these rule is enclosed” and the paragraph on page 2 where the Plans Reviewer lists items that were mailed and included in the packets ending with copies of subpoenas; Member Meyer seconded, no further discussion, motion passed unanimously.

Member Ritchie remarked that the motion for a continuance should be reworded as the sentence was misleading. The members agreed and discussed rewriting the motion and after numerous versions Chairman Winnik read the final wording.

Member Lancaster moved for a continuance to hear Case #122-05 – Phase II Appeal of Decision – Concept Plan, for the fact that the Concept Plan has expired, to the date of Tuesday, June 17, 2008 at 5:00 p.m. Reason: to develop Rules of Procedures for the Board of Appeals; Member Ritchie seconded, no further discussion, motion passed unanimously.

Chairman Winnik entertained a motion to approve the amended motion.

Member Ritchie moved to approve the minutes as amended seconded by Member Meyer, no further discussion, motion passed unanimously.

Member Ritchie moved to approve the minutes as amended, Member Meyer seconded, motion passed unanimously.

Chairman Winnik noted that there are now two amendments to the minutes and moved to approve the minutes as amended; all voted in favor, motion passed.

NEW BUSINESS:

Rules of Procedure: Discussion and vote regarding passage of rules of procedure for future BOA hearings.

Chairman Winnik advised that they would go over the draft document line by line and make changes as necessary.

The Board members spent considerable time reviewing and discussing the draft document and made several changes. A copy of the draft document and the revised final document is attached.

Chairman Winnik entertained a motion.

Member Lancaster moved to approve the Rules of Procedures for Administrative Appeals as amended; seconded by Member Icenhower, no further discussion, motion passed unanimously.

Mr. Mitchell brought up that Ms. Eileen Powers, attorney for RAR, have requested a postponement of the appeal hearing regarding the Leonardtown Landing project presently scheduled for June 17, 2008 at 5:00 p.m. It is our understanding that the Board intends to adopt Rules of Procedure and also understand that the proposal adopted will place an affirmative duty on RAR that will require adequate time to address. We would like to have sufficient opportunity to review those rules and we request a postponement of sixty days.

Chairman Winnik stated that he has already had prepared letters that will go out before sixty days. The first letter is addressed to Mr. Russo and reads as follows:

Enclosed are the Rules of Procedure for Administrative Appeals approved by the Board of Appeals on June 10, 2008. With your receipt of these Rules the Board has set a date of August 12, 2008, at 5:00 pm. To hear your claim, Case # 122-05 Leonardtown Landing Phase II – Validity of Claim that Concept Approval Has Expired. You also have until July 11, 2008, to submit

“All documents, records and exhibits that were available, but not presented at the time the contested decision was made, that the appellant intends to rely upon at the public hearing.”

You have until July 28, 2008 to submit

“A summary of what the appellant expects to prove, including the names of appellant’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."

Chairman Winnik stated that similar letters will be sent to Jean Moulds, Chairperson for the Planning and Zoning Commission reads as follows:

Enclosed are the Rules of Procedure for Administrative Appeals approved by the Board of Appeals on June 10, 2008. With your receipt of these rules, the Board has set a date of August 12, 2008, at 5:00 pm. to hear Case # 122-05 Leonardtown Landing Phase II – Validity of Claim that Concept Approval Has Expired.

The Rules of Procedure state that "The Planning and Zoning Commission shall forthwith transmit to the Board, all the papers constituting the record upon which the action appealed from was taken." Please do so as soon as possible.

Chairman Winnik stated another letter will also be sent to Ms. Laschelle Miller, Town Administrator and it reads as follows:

Enclosed are the Rules of Procedure for Administrative Appeals approved by the Board of Appeals on June 10, 2008. With your receipt of these Rules the Board has set a date of August 12, 2008, at 5:00 pm. to hear Case # 122-05 Leonardtown Landing Phase II – Validity of Claim that Concept Approval Has Expired.

Chairman Winnik inquired if the board members would be available for the next meeting on Tuesday, August 12, 2008.

The Board members all agreed that the next meeting would be held on Tuesday, August 12, 2008.

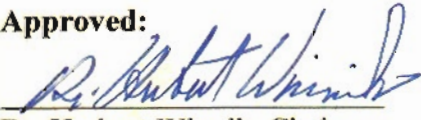
Adjournment:

Member Meyers moved to adjourn the meeting at 6:30 p.m., seconded by Member Ritchie, no further discussion, motion passed unanimously.


Respectfully submitted:



Teri P. Dimsey, Recording Secretary


Approved:


Dr. Herbert Winnik, Chairman

Lanny Lancaster, Vice Chair


Dr. William Icenhower, Member


Darren Meyer, Member


Joan Ritchie, Member



Leonardtown Board of Appeals
Rules of Procedure for Administrative Appeals
June 10, 2008

(155-134 A.) Leonardtown Code:

An appeal to the Board may be made by any person, group, agency or corporation aggrieved or by any officer, department, board, commission or bureau of the Town affected by any decision of the Planning and Zoning Commission or Town Official(s). Such appeal shall be taken within 30 days after the decision in dispute by filing with the Town Commission and with the Board notice of appeal, specifying the grounds thereof. The Planning and Zoning Commission shall forthwith transmit to the Board of Appeals all the documents constituting the record upon which the action appealed from was taken.

The following are the agreed upon procedures for an administrative appeal as approved by the Board of Appeals on June 10, 2008.

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

- A. All documents and records upon which the application for appeal is based, including the final order, requirement, decision or determination being reviewed.
- B. A specific reference to each section of the Town Code that authorizes the Appeals Board to hear the application and grant the requested relief.
- C. Names and addresses of adjacent property owners as required by this Chapter 155 of the Town Code.
- D. The following materials and information need not be submitted by the Appellant with the application but shall be submitted no later than 30 days prior to the contested case hearing.
 1. All documents, records and exhibits that were available, but not presented at the time the contested decision was made, that the appellant intends to rely upon at the contested case hearing.
 2. A summary of what the Appellant expects to prove, including the names of appellant's witnesses, summaries of the testimony of expert witnesses and the estimated time required for presentation of the Appellant's case. All reports from experts shall be filed with the Board and appropriate Town Officials at least 15 days prior to the contested case hearing.

II. Order of Presentation for the Hearing

Establish a quorum of Board of Appeals members. Presentation of the official record of exhibits as noted in Section I by the Board of Appeals, notations of any objections to any part of the record and other preliminary matters.

- A. The examination by the members of the Board of Appeals is permitted at any time. All witnesses will testify under oath. The order of presentation and cross examination of all witnesses shall be as follows:
 1. Opening statement by the Appellant.
 2. Opening statement by the Town Officials.
 3. Presentation of testimony and exhibits by the Town Officials.
 4. Cross-examination by Appellant, if desired.
 5. Presentation of testimony and exhibits by the Appellant.
 6. Cross-examination by Town Officials, if desired.
 7. Formal receipt into evidence of the record by the Board of Appeals.
 8. Closing statement by the Appellant.
 9. Closing statement by the Town Officials.

III. Burden of Proof

The Appellant 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.

IV. Decisions of the 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 presented at this hearing.
- 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. A majority vote of the Board, based on the members present, is required to grant an Appeal.

All Rules of Procedure are to be applied to the proceedings as interpreted by the Chair of the Appeals Board.

Leonardtown Board of Appeals
Rules of Procedure for Administrative Appeals
May 28, 2008

An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, commission or bureau of the Town affected by any decision of the Planning and Zoning Commission. Such appeal shall be taken within 30 days after the decision by filing with the Commission and with the Board notice of appeal, specifying the grounds thereof. The Planning and Zoning Commission shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. (155-134 A.) **Leonardtown Code.**

The following is the agreed procedures for an administrative appeal as approved by the Board of Appeals on .

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

- A. All documents and records upon which the application is based, including the final order, requirement, decision or determination being reviewed.
- B. A specific reference to each section of the Town Code that authorizes the Board to hear the application and grant the requested relief.
- C. Names and addresses of adjacent property owners as required by this chapter.
- D. 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.
 - 1. All documents, records and exhibits that were available, but not presented at the time the contested decision was made, that the applicant intends to rely upon at the public hearing.
 - 2. A summary of what the applicant expects to prove, including the names of the 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.

II. Order of Presentation for the Hearing

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*. All witnesses will testify under oath.

- A. Establish a quorum of Board of Appeals members. Presentation of the official record of exhibits by the Board of Appeals, notations of any objections to any part of the record and other preliminary matters.
1. Opening statement by the Applicant.
2. Opening statement by the Town Officials.
3. Presentation of testimony and exhibits by the Town Officials.
4. Cross-examination by applicant, if desired.
5. Presentation of testimony and exhibits by the Applicant.
6. Cross-examination by Town Officials, if desired.
7. Formal receipt into evidence of the record by the Board of Appeals.
8. Closing statement by the Applicant.
9. Closing statement by the Town Officials.

III. 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.

IV. 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. A majority vote from the Board is required to grant an application.
- C. All Rules of Procedure are to be interpreted by the Chairman of the Appeals Board.