

SPECIAL EXCEPTION

BOARD OF APPEALS
Dorchester County, Maryland

Appeal Case No.
Date Filed:
Fee Paid:

To the Board of Appeals:

Pursuant to Article V, §155-21 of the Dorchester County Zoning Code, adopted November 24, 1998, effective January 1, 1999, a request is hereby made for:

- Variation from strict application of said ordinance
- Decision on allegation of error
- Special Exception
- Amend stipulations of previous appeal case

Purpose of Appeal: (Describe variance requested or alleged error. If Special Exception requested state fully the kind of exception desired and reasons therefore).

Applicable Section(s) of Code: **Section 155-20;** _____

Zoned: Road Classification: Tax ID #

Property Located: Containing: acre(s):

Map: Block: Parcel: Lot:

Owner of property:

Address if owner: Telephone #

Applicant's name and address if different from above: _____

_____ Telephone # _____

Has property in question ever been subject of previous appeal: # Date:

FLOODPLAIN: YES NO EXEMPT CRITICAL AREA: YES NO

Permission is hereby granted to conduct necessary inspections of these premises for which this appeal is requested.

No fees shall be refunded if an application is withdrawn after the publication of the public hearing notice.

Solely in the case of a Critical Area variance request, is the request in any way related to a disability of the applicant or anyone in the applicant's household? Yes No

Signature of Owner

Signature of Applicant

IMPORTANT: A sketch of the property with proposed buildings or use must be submitted by the applicant. Applications on which all required information is not furnished will be returned for completion before processing.

SPECIAL EXCEPTION – CRITERIA FOR REVIEW BY THE BOARD OF APPEALS

This Guide is intended to assist you in preparing for your zoning appeal case.

Parties interested in obtaining review and appeal to the Board of Appeals for their project under the special exception section of the Dorchester County Zoning Ordinance should understand the parameters used by the Appeals Board in their decision.

A Special Exception is defined as:

SPECIAL EXCEPTION – A use that would not be appropriated general or without restriction throughout a district, but which, if controlled as to number, area, location or relation to the surrounding land, could be appropriate within that district. Such uses may be permitted as “special exceptions” only if specific provision for such use is made in the applicable district regulations.

This means in part that (1) the project must be labeled in that zoning district as a special exception or a similar use, and (2) such use may be permitted only under specific provisions as approved by the Appeals Board which includes its appropriateness to the surrounding land.

The Board Appeals uses the following guidelines in deciding each case under the special exception section:

To hear and decide only such special exceptions as the Board of Appeals is specifically authorized to pass on, according to the provisions of this chapter, and to decide such questions as are involved in determining whether special exceptions should be granted.

A special exception may be granted only when the Board of Appeals finds from a preponderance of the evidence of record that the proposed use or structure:

- a. Will be consistent with the County Comprehensive Plan:
- b. Will be in harmony with the general character of the neighborhood, considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses:
- c. Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or surrounding neighborhoods:
- d. Will cause no objectionable noise, vibration, fumes, odors, dust, glare or physical activity:
- e. Will have no detrimental effect on vehicular or pedestrian traffic:

- f. Will not adversely affect the health, safety, security or general welfare of residents, workers or visitors in the area:
- g. Will not, in conjunction with existing development in the area and development permitted under existing zoning, overburden existing public services and facilities, water, sanitary sewer, public roads, storm sewers, drainage and other public improvements and:
- h. Meets the definitions and specific standards set forth elsewhere in this chapter for such use:

The key elements in this paragraph for the applicant to understand are the sections underlined. If there are no adverse impacts, then the applicant may wish to note that they do not exist. The applicant should also indicate the positive points of his/her request and if any negative uses would exist, then whatever efforts would be put in place by applicant to mitigate their impact.

The following also applies to all exceptions and should prove self-explanatory:

1. The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.
2. In all cases, the Board of Appeals shall be satisfied that the proponents of the special exception intend to use or begin construction for the purpose of using the special exception within two (2) years of the approval of the special exception. If the proponents should fail to use or start construction of the special exception within two (2) years of the approval of the special exception or complete the construction within a reasonable period the approval shall become void.
3. Should a special exception granted by the Board of Appeals or approved after the adoption of this chapter under Section 155-70, be destroyed or damaged by fire or other casualty, such use be reconstructed, restored or replaced to the same degree that existed prior to the fire or other casualty without further action of the Board.

PLEASE NOTE: You may elect to be represented by legal counsel or you may represent yourself. If you choose to represent yourself please be prepared to address the issues outlined above.

How To Prepare and Present a Case For A Variance or Special Exception

Definitions: Criterion – *requirement or standard* which must be met in order to achieve a certain result or for evaluation or testing something.

Criteria – plural of criterion – more than one criterion.

- I A variance or special exception request must meet certain criteria in order to be approved. You should have received a copy of the criteria for your case with these instructions.
- II Failure to meet even one criterion can cause the variance or special exception to be denied!
- III A criterion is a statement, which the Board of Appeals in its own mind will answer positively or negatively after hearing the proof offered as to each criterion.
- IV You must supply the proof of each of the criteria required for your type of case at the hearing. **Also, before we can accept your application, we must receive a printed or typed complete response to each criteria applicable to your case.**
- V It is **not** sufficient to simply read the criteria in the best light for your case.
 - A. For example: in a **variance** it is not sufficient to just read criteria “a” saying” special conditions or circumstances do exist which are peculiar to the land, structure or building involved”.
 - B. Rather you must prove the truth of that statement.
For example: “When I bought property the ordinance wasn’t yet in effect. Now the tidewater buffer zone covers 90% of the property so that I cannot build a deck (or garage etc.) without interfering with the zone. The way only I can use my property normally is with a variance from the strict rules which were not in force when I bought it”.
 - C. It is not sufficient in a **special exception** to simply read criteria “e” which says” it will not cause objectionable noise, vibration, fumes, odors, dust glare or physical activity”.
 - D. Rather you must prove that statement by testifying for example that; “My home occupation of mail order sales will be entirely conducted inside my house. The only noise will be the phone ringing and my talking which no one outside can hear. No vibration, fumes, odors, dust glare or physical activity will be generated by my sitting in a chair talking to customers on the telephone.
- VI If there is opposition to your request it would be wise to anticipate their objections to your request and offer to take specific actions to make your request less objectionable to your neighbors.
- VII Likewise – if the Board of Appeals is hesitant to give you exactly what you asked for (such as nighttime operation of sawmill in a residential neighborhood) you might want to offer to accept something less (such as operating hours from 9 a.m. to 5 p.m.) which may relieve their hesitation.
- VIII If there are permits or inspections required from other state or federal agencies for your variance or special exception, you may wish to have these completed **before** appealing at the Board of Appeals, to avoid having to come back at a later time when they are completed.

INFORMATION REGARDING POSTING OF SIGN

Notification:

Unless otherwise expressly provided by law, all notices to the general public required by the terms of Dorchester County Zoning Ordinance shall be accomplished as follows:

Posting of Property: Posting of property shall be effected as least fifteen (15) days prior to hearing date by erecting a sign to be furnished by the Director of Planning. **Such signs shall be erected, by the person(s) making application, within ten feet of whatever boundary line of such land abuts the most traveled public road so as to be clearly visible to the public and, if no public road abuts thereon, then facing in such a manner as most readily may be seen by the public, and designated by the Director of Planning. The bottom of the sign shall not be less than two and one-half (2½) feet from the ground. *The sign furnished by the Director of Planning shall bear the words: NOTICE, ZONING APPLICATION PENDING, For More Information call 410-228-3234.*** If the applicant is a person other than the owner, his attorney, agent or a person otherwise privy with the owner and the applicant files an affidavit stating that the owner is unwilling to permit the posting of any such sign, the posting shall be made by the Planning Director. At the hearing, it shall be the duty of the applicant to prove by affidavit that he or she has fully complied with this provision and has continuously maintained the sign or other posting in compliance with the provision up to the time of the hearing.

ANY SIGN RAQUIRED TO BE POSTED BY THE PROVISION SHALL BE MAINTAINED IN A VISIBLE LOCATION AND FREE FROM OBSTRUCTION BY VEGETATION UNTIL AFTER THE PUBLIC HEARING IS HELD, AND SUCH SIGNSHALL BE REMOVED AND RETURNED TO THE PLANNING AND ZONING OFFICE WITHIN FIVE DAYS OF THE PUBLIC HEARING.

APPEAL OR REZONING CASE NO. _____

SIGN MAINTENANCE AGREEMENT

I (we), the petitioner(s) of this appeal, agree that I (we) will be responsible for the continuous maintenance, during the period prior to the hearing date, of the sign which I(we) agree to have posted on the property for purposes of this hearing. I (we) further agree to notify the Planning and Zoning Office at 410-228-3234 if at any time during the required posting period this sign is not properly posted.

A check for \$50.00 made payable to Dorchester County Planning and Zoning will be taken by Dorchester County Planning and Zoning staff to insure return of the zoning notice sign. Said sign is to be returned to the Dorchester County Planning and Zoning Office the night of the hearing or within five (5) days after the hearing. Your check will be returned upon receipt of the sign in same condition in which it was lent.

Filing Date
(Completed by Staff)

Applicant's/Agent Signature

Posting Date
(Completed by Staff)

Applicant's/Agent's Signature

Lower section to be completed the night of the hearing

Sign Affidavit

I hereby affirm under penalties of perjury that the subject was posted as required on _____ (date) and to the best of my knowledge, information and belief the posting remained in place until _____ (date).

_____ Check if sign was returned the night of the Applicant's hearing.

Signature of Applicant/Agent

SPECIAL EXCEPTION CRITERIA

APPLICANT:

DATE:

- a. The proposed use or structure **(will) (will not)** be consistent with the County Comprehensive Plan

- b. It **(will) (will not)** be in harmony with general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures intensity and character of activity, traffic and parking conditions and number of similar uses

- c. It **(will) (will not)** be determined to use, peaceful enjoyment, economic value or development of surrounding properties or surrounding neighborhood

- d. It **(will) (will not)** cause objectionable noise, vibration, fumes, odors, dust, glare or physical activity

e. It **(will)** **(will not)** have detrimental effect on vehicular or pedestrian traffic

f. It **(will)** **(will not)** adversely affect the health, safety, security or general welfare of residents, workers or visitors in the area

g. It **(will)** **(will not)** [in conjunction with existing development in the area and development permitted under existing zoning] overburden existing public services and facilities including schools, police and fire protection medical facilities, water, sanitary sewer, public roads, storm sewers, drainage and other public improvements

h. If **(does)** **(does not)** meet the definition and specific standards set forth in the Dorchester County Zoning Ordinance for such use
