

RESOLUTION NO. 3249

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY TO APPROVE AND ADOPT RULES OF PROCEDURE FOR THE SALISBURY BOARD OF APPEALS.

WHEREAS, pursuant to Ordinance No. 2769, the City of Salisbury (“City”) has amended the Salisbury City Code to combine the Housing Board of Adjustment and Appeals, the Building Board of Adjustment and Appeals, and the Board of Zoning Appeals into a new board known as the “Board of Appeals”; and

WHEREAS, section 17.12.090(c) of the Salisbury City Code provides that the Board of Appeals shall adopt rules necessary for carrying out the provisions of that chapter; and

WHEREAS, in accordance with the foregoing, attached hereto as **Exhibit 1** are proposed Rules of Procedure for the Board of Appeals.

WHEREAS, by this Resolution, the Council hereby approves the Rules of Procedure for the Board of Appeals attached hereto as **Exhibit 1**; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 1. The Rules of Procedure for the Salisbury Board of Appeals attached hereto and incorporated herein as **Exhibit 1** are hereby approved and adopted.

Section 2. It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Resolution shall be deemed independent of all other provisions herein.

Section 3. It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Resolution shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Resolution shall remain and shall be deemed valid and enforceable.


Section 4. The recitals set forth hereinabove and **Exhibit 1** attached hereto, are incorporated into this section of the Resolution as if such recitals and **Exhibit 1** were specifically set forth at length in this Section 4.

THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 10th day of April, 2023 and is to become effective immediately upon adoption.

ATTEST:

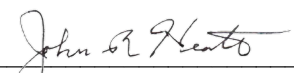


Kimberly R. Nichols, City Clerk



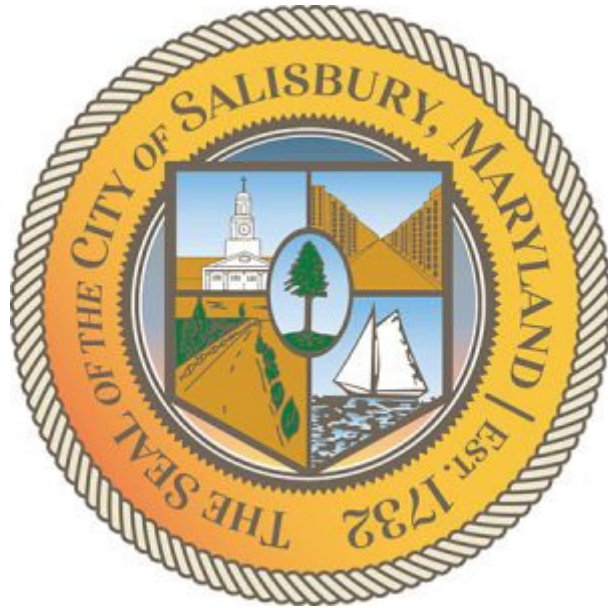
Muir W. Boda, City Council President

Approved by me, this 10th day of May, 2023.



John R. Heath, Acting Mayor

SALISBURY BOARD OF APPEALS



RULES OF PROCEDURE

Adopted: TBD

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Section I: Authority.

These Rules of Procedure are promulgated under the authority vested in the Board of Appeals by Md. Code Ann., Land Use § 4-301 *et. seq.* and by Article VI, Chapter 17.12, Title 17, of the Salisbury City Code (hereinafter referred to as the "Code"). It is the intent of these Rules of Procedure to prescribe the means for the implementation of the Code.

Section II. Organization.

A. *Name.* The name of this body is the "Salisbury Board of Appeals," referred to herein as "the Board."

B. *Membership.* The Board shall consist of five members and two alternates appointed by the Mayor and confirmed by the City Council. When possible, preference shall be given in order to ensure that the Board includes at least one building professional/architect/engineer, tenant, property owner and/or attorney, as well as potential members who have a demonstrated special interest, specific knowledge, or professional or academic training in public health. Members shall be appointed for terms of three years. A member whose term has expired may continue to serve until reappointed or replaced. A Board member may be re-appointed for additional and consecutive terms.

C. *Standards of Conduct:*

1. No Board member shall allow bias or prejudice to affect the ability to exercise fairness and reason in any proceeding before the Board.
2. No Board member shall represent an applicant, appellant or member of the general public before the Board.
3. A Board member may appear before the Board on any application or appeal, but may not participate as a Board member.
4. A Board member shall note on the record, before any proceeding before the Board commences, or as soon as realized after a proceeding has commenced, that there is a conflict of interest or the appearance of a conflict of interest. If the Board member believes, as a result, that they cannot make any decision related to the proceeding in a fair and impartial manner, they shall recuse themselves from participating in the proceeding.

D. *Removal of Members.* A member of the Board may be removed by the Mayor

for:

1. Incompetence;
2. Misconduct; or

3. In the same manner as for a member of a State board or commission:
 - a. Failure to attend meetings under § 8-501 of the State Government Article; or
 - b. Conviction of a crime in accordance with § 8-502 of the State Government Article.

Prior to Removal, the Mayor shall provide to the member:

1. A written statement of charges stating the grounds for removal; and
2. An opportunity for a public hearing to contest the charges.

E. *Officers.*

1. The Board shall have as officers a Chair, Vice-Chair and Secretary. The Board shall also appoint at least one Open Meetings Act representative who shall receive all required training on the Maryland Open Meetings Act.
2. The Director of the Department of Infrastructure and Development or their designated representative shall serve as Secretary to the Board.
3. The Chair shall sit as the presiding officer of the Board. The Chair shall direct the Secretary in the preparation of the agenda and rule on any requests for postponement submitted prior to the hearing date. The Chair shall call meetings to order, rule on all points of order, administer oaths, bring to vote all matters required of Board action, and together with the Secretary, authenticate the record of meetings, actions, orders, certificates and other proceedings of the Board.
4. The Vice-Chair shall perform the duties of the Chair in the Chair's absence.
5. The Secretary shall issue all required notices of meetings, including notices to members. At the direction of the Chair, the Secretary shall prepare the agenda, distribute required documentation to Board members, record the proceedings and prepare minutes of the meetings, maintain official records and files of the Board and conduct the general correspondence of the Board. The Secretary will receive and process all applications for appeal filed with the Board.
6. Election of Officers.
 - a. The Board shall elect a Chair and Vice-Chair, as well as an Open Meetings Act representative, whose terms shall be for two years or until their successors have been elected.

- b. The Secretary of the Board shall preside over the nomination and election of the Chair. Thereafter, the Chair shall preside over the meeting and conduct and supervise the nomination and election of a Vice-Chair.
- c. Should the office of Chair become vacant for any reason, the Vice-Chair shall become the Chair for the duration of the unexpired term and the Board shall elect a new Vice-Chair to fill the unexpired term.

Section III. Meetings.

A. Open Meetings Act.

- 1. All meetings of the board shall be open to the public, except that the Board may hold closed sessions in accordance with the Maryland Open Meetings Act.
- 2. Public Attendance.
 - a. At any open session of the Board, the general public is invited to attend and observe.
 - b. Except in instances when the Board expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise authorized by law, no member of the public attending an open session may participate in the session.
- 3. Disruptive Conduct.
 - a. A person attending an open session of the Board may not engage in any conduct, including visual demonstrations such as the waving of placards, signs, or banners, that disrupts the session or that interferes with the right of members of the public to attend and observe the session.
 - b. The Chair may order any person who persists in conduct prohibited by subsection (a) of this section or who violates any other regulation concerning the conduct of the open session to be removed from the session and may request police assistance to restore order.
 - c. The Chair may recess the session while order is restored.
- 4. Recording, Photographing, and Broadcasting of Open Session.
 - a. A member of the public, including any representative of the news media, may record discussions of the Board at an open session by means of a tape recorder or any other recording device if the device does not create an excessive noise that disturbs members of the Board or other persons attending the session.
 - b. A member of the public, including any representative of the news media, may photograph or videotape the proceedings of the Board at an open session by means of any type of camera if the camera: (1) Is operated without excessively bright artificial light that disturbs

members of the Board or other persons attending the session; and (2) Does not create an excessive noise that disturbs members of the Board or other persons attending the session.

c. A representative of the news media may broadcast or televise the proceedings of the Board at an open session if the equipment used: (1) Is operated without excessively bright artificial light that disturbs members of the Board or other persons attending the session; and (2) Does not create an excessive noise that disturbs members of the Board or other persons attending the session.

d. The presiding officer may restrict the movement of a person who is using a recording device, camera, or broadcasting or television equipment if such restriction is necessary to maintain the orderly conduct of the session.

5. Recording Not Part of Record. A recording of an open session made by a member of the public, or any transcript derived from such a recording, may not be deemed a part of the record of any proceeding of the Board.

B. *Meetings.*

1. Meetings shall be held on an as-needed basis.

2. Meetings of the Board shall be convened by the Chair, or in the Chair's absence, the Vice-Chair. In the event both are absent, the regular member in attendance with the greatest seniority of service shall act as Chair.

3. The Chair or, in the Chair's absence, the acting Chair may administer oaths.

4. The Board shall record and keep minutes of its proceedings, which show the vote of each member upon each question, or, if a member is absent or fails to vote, the minutes shall indicate such fact. The Board shall keep recordings of all proceedings, records of its examinations and other official actions, all of which shall be filed immediately in the office of the Board and shall be a public record open to inspection during the hours of normal operation of the office. Copies of the minutes shall be made available to interested parties. A party who requests a copy of the recording or its transcript shall pay the cost of the recording or transcript.

5. The Board, in its discretion, for any reasonable purpose stated, may decide to continue a public hearing to any other reasonable time, place or location it deems advisable. The appellant/applicant, as well as all other interested parties who registered at the initial hearing, shall be notified in person or in writing of the date, time and place of the continuance meeting.

C. *Order of Business.*

1. The Chair, or the Chair's assigns, may call each case to be heard by the Board.

2. The Chair shall administer oaths.
3. The Chair shall, at the Chair's discretion, take such steps as necessary to ensure the proper and orderly conduct of meetings. In order to afford all persons an opportunity to be heard on an appeal or other agenda item, the Chair may impose reasonable time limits upon comments.
4. Each party has the following rights at a hearing:
 - a. To call and examine witnesses on any matter relevant to the issues of the hearing;
 - b. To introduce documentary and physical evidence;
 - c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing; and
 - d. To represent themselves or to be represented by anyone of their choice who is lawfully permitted to do so.

D. Quorum and Voting.

1. Three members shall constitute a quorum. The Chair shall be counted in reaching a quorum. A member of the Board shall recuse themselves from participating in a matter in which the member may have a conflict of interest or an appearance of a conflict of interest. If a majority of the Board does not approve the application or find in the favor of the appellant, the Board's inability to reach a decision by majority vote shall result in denial of the application or appeal.
2. Questions put to a vote are decided by a majority of the members present and voting; however, no decision shall be made in the absence of a quorum.
3. A tie vote by the Board shall be interpreted as a defeat of the motion upon which the vote was taken.
4. The Secretary shall record the name of the Board member making each motion and the name of the member who seconds the motion.
5. Each motion shall contain a statement of the findings of fact and grounds forming the basis of the Board's action or decision, and the full text of said motion and record of members' votes shall be incorporated in the minutes of the Board.

6. The official date of the Board's decision shall be that date shown on the Notice of Decision sent to the applicant and/or their representative.
7. No application requesting the same relief previously ruled upon by the Board shall be heard by the Board for a period of one (1) year following the date of the decision.


E. *Appeals.* Any applicant, appellant or interested person aggrieved by a decision of the Board shall have the right to appeal that decision to the Circuit Court for Wicomico County. Any appeal shall be noted in the Circuit Court within 30 days of the Board's decision

Section IV. Amendments.

These Rules of Procedure, and any part thereof, may be amended by the Board, subject to approval by the City Council.



City of
Salisbury
John "Jack" R. Heath, Mayor

To: Andy Kitzrow, City Administrator
From: Richard D. Baldwin, Director of Infrastructure and Development 
Date: March 27, 2023
Re: Resolution to adopt BOA Handbook

The attached resolution is to adopt the Handbook for the Board of Appeals prior to their first meeting. The Handbook establishes rules and procedures for how the Board shall function.

Unless you or the Mayor has further questions, please forward a copy of this memo and the attached draft ordinance to the City Council.

Attachments:

- 1 – Draft Resolution
- 2 – Draft Handbook