

Article II
Chapter 165. Zoning

Section 12: Appeals, Variances, Special Exceptions and Special Developments

§165-89 PURPOSE

Certain uses require additional analysis due to their size, scale, or possible impact on adjoining properties. Also, on occasion, it is necessary to provide variances from the specific requirements of the Town of Bel Air Development Regulations due to the configuration or specific conditions of a parcel. This section outlines the procedures the reviewing agencies must follow in considering such development proposals. These procedures are intended to ensure that the following development objectives are satisfied:

- Meet the goals and objectives of the Land Use element of the Town of Bel Air Comprehensive Plan.
- Establish adequate land use controls while protecting the public interest.
- Facilitate development that is responsive to current and future market conditions.
- Permit flexible development, scale and configuration on individual lots where standard regulations would create practical difficulty or hardship.
- Provide a process and standards whereby the Zoning Administrator may grant limited adjustments to the strict application of the development standards of the Zoning Code.

§165-90 BOARD OF APPEALS APPLICATIONS, APPEALS, HEARINGS AND STAY OF PROCEEDINGS

- A. Applications. When and By Whom Taken. In cases in which the Board of Appeals has original jurisdiction under the provisions of the Town of Bel Air Development Regulations, an application may be made by any property owner(s) or his/her representative(s) or by any contract purchaser, optionee or tenant along with the consent of the record owner(s), or by a governmental officer, department, board or bureau. Such application shall be filed with the Zoning Administrator, who shall transmit the same to the Board of Appeals. The petitioner shall be responsible for providing the name and mailing address of all adjoining property owners. Written notice shall be mailed by the Planning Department to all adjoining property owners (based on information provided by applicant) ten days prior to public hearing.
- B. Appeals. When and By Whom Taken. An Appeal to the Board of Appeals may be requested by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the Zoning Administrator. Such appeal

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shall be taken within thirty (30) days after the decision by filing an application to the Board of Appeals specifying the grounds for appeal. The Zoning Administrator shall transmit to the Board of Appeals all of the papers constituting the record upon which the action appealed from was taken.

- C. Hearings. The Board of Appeals shall schedule the hearing of the application or appeal, give public notice of the same by not less than two (2) publications in a paper of general circulation in Bel Air, the second of which shall be at least ten (10) days before the hearing, post a notice on the property in question at least ten (10) days before the hearing, give at least fifteen (15) days notice to applicant and adjoining property owners, and decide the same within sixty (60) days of the closing of the public hearing unless an extension detailed in writing, is agreed upon by all parties. At the hearing, any party may appear in person or by agent or attorney. Any party adversely affected by a decision of the Board of Appeals may appeal to the Circuit Court for Harford County in the manner set forth in Section 4.08, Article 66B, Annotated Code of Maryland, as amended from time to time. This appeal must be filed within thirty (30) days of the Board of Appeals written decision. The Court may affirm, reverse, vacate or modify the decision complained of in the appeal.
- D. Stay Of Proceedings. An appeal made to the Board of Appeals shall stay all proceedings in the furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals, after notice of appeal shall have been filed that, by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Appeals or by the Circuit Court for Harford County, upon application after notice has been properly made and due cause has been shown. The Maryland Rules shall apply when an appeal is taken to the Circuit Court or beyond.
- E. Action Of The Board Of Appeals. In exercising its powers, the Board of Appeals may, in conformity with the provisions of Statute and of the Town of Bel Air Development Regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

§165-91 POWERS OF THE BOARD OF APPEALS

- A. Administrative. The Board of Appeals shall have the power to hear and decide appeals, where it is alleged there is error in any order, requirements, decision, or

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determination made by an administrative official and/or the Historic Preservation Commission in the enforcement of the provisions of said Article 66B and of the Town of Bel Air Development Regulations adopted pursuant thereto.

B. Limitations, Guides and Standards. In the case of special exceptions and variances, which require Board of Appeals approval, and whenever in the Town of Bel Air Development Regulations certain powers are conferred upon the Board of Appeals, or the approval of the Board of Appeals is required before a permit may be issued, or the Board of Appeals is called upon to decide certain issues, the Board of Appeals shall:

1. Cause the property to be posted in a conspicuous place.
2. Hold a public hearing, consider all testimony and data submitted, and hear any person for or against the issuance of the permit.

The application for a permit shall not be approved where the Board of Appeals finds a proposed building, addition, extension of building or use, sign, use or change of use would:

1. Adversely affect the public health, safety, security, or general welfare.
2. Result in dangerous traffic conditions.
3. Jeopardize the lives or property of people living in the neighborhood.

In deciding an appeal, the Board of Appeals shall give consideration, among other things, to the following information when applicable:

1. The number of people residing, working or studying in the immediate areas.
2. Traffic conditions, including facilities for pedestrians, such as sidewalks and safety zones, availability of parking facilities, impact of ingress, egress, and level of service of nearby intersections.
3. Potential impact upon the orderly growth of the neighborhood and community.

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4. Potential impact upon the needs of the entire community and particular neighborhoods.
5. The purpose of these regulations as provided in Section 165-5.
6. The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding properties.
7. Facilities for sewers, water, trash and garbage collection and disposal, and the availability of such services.
8. Availability of fire fighting equipment and accessibility to the site for such equipment.
9. Decisions of the public courts of Maryland.
10. The effect of such use upon the peaceful enjoyment of people in their homes.
11. The most appropriate use of land and structures as determined and indicated by the Town of Bel Air Comprehensive Plan and other neighboring uses.
12. The type and kind of structures in the vicinity where people are apt to gather in large numbers such as schools, churches, theaters, hospitals and the like.
13. The Town of Bel Air Comprehensive Plan component for land use, transportation, housing, economic development, urban design and community facilities.
14. The preservation of cultural and historic landmarks and significant archeological features.
15. The conservation of property values.
16. The contribution, if any, such proposed use, building or addition would make toward the deterioration or improvement of areas and neighborhood.
17. The effect of the proposed use on light and air in the neighborhood.

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18. The potential danger of fire or explosion associated with the proposed structure or use.
 19. All applicable Town of Bel Air Development Regulations.
- C. Decisions of Board. The Board of Appeals shall render its decision based upon its review of the information submitted by the applicant, along with any staff comments or opinions which the Zoning Administrator may submit, as well as comments received from proponents and opponents in attendance at the public hearings.

§165-92 VARIANCES

- A. General. The Board of Appeals is authorized to grant variances from the terms of the Town of Bel Air Development Regulations as provided in Article 66B of the Annotated Code of Maryland. Minor variances as specified in Section 165-92.H of this Section may be approved by the Zoning Administrator or his/her designee.
- B. Special Regulations. In order to grant a variance, the Board of Appeals or the Zoning Administrator or his/her designee, whichever is applicable, must find, by clear and convincing evidence, each of the following:
 1. Uniqueness: The subject property has an inherent characteristic or condition not generally shared by other surrounding properties, i.e. its shape, topography, subsurface condition, environmental factors, historical significance, practical restrictions imposed by abutting properties or the uses thereon, or other restrictions.
 2. Practical Difficulty:
 - a. Strict compliance with the Town of Bel Air Development Regulations would unreasonably prevent the applicant from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; however, that the granting of the variance would make the property more profitable is not sufficient reason to grant a variance.
 - b. Granting the variance would do substantial justice to the applicant as well as to other property owners in the area.

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- c. The variance can be granted in such a way that the spirit of the Town of Bel Air Development Regulations will be observed and public safety and welfare secured.
- d. The practical difficulty is caused by the property's uniqueness and is not personal to the applicant nor the result of acts of the applicant, the property owner, or his predecessor in title.

If a lesser relaxation than that applied for will give substantial relief to the applicant and be more consistent with justice to other property owners, the Board of Appeals is authorized to grant that lesser relief.

- C. Conditions of Approval. In authorizing a variance, the Board of Appeals or Zoning Administrator or his/her designee, whichever is applicable, may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as may be deemed necessary in the interest of the furtherance of the purposes of the Town of Bel Air Development Regulations and in the interest of the public. In authorizing a variance, with attached conditions, the Board of Appeals or Zoning Administrator or his/her designee, whichever is applicable, shall require such evidence and guarantee or bond as may be deemed – necessary to assure that the conditions attached are being and will be complied with.
- D. Lapse of Variance. After the Board of Appeals or Zoning Administrator or his/her designee, whichever is applicable, has granted a variance, the variance so granted shall lapse two (2) years from the date of the final decision. However no lapse shall take place if the change of use has taken place, if the construction of buildings has been completed or, if a good faith commencement of construction has occurred and substantial, visible construction has taken place in accordance with the plans for which such variance was granted. Within thirty (30) days of the expiration of the two (2) year period, or any extension previously granted, the property owner may submit an application to the Board of Appeals or Zoning Administrator or his/her designee, whichever is applicable, requesting one (1) additional extension for a period of one (1) year. The Board of Appeals or Zoning Administrator, whichever is applicable, may grant an extension upon good cause shown.
- E. Existing variance Modifications and Amendments. The requirements of the Town of Bel Air Development Regulations shall not apply to any variance

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approved prior to enactment of the Town of Bel Air Development Regulations or amendments thereto. Any modifications or amendments to a variance approved prior to the enactment of the Town of Bel Air Development Regulations, which are not in accordance with the terms of the Town of Bel Air Development Regulations, shall require the approval of the Board of Appeals pursuant to Section 1654-92.C.

- F. Resubmission of Variance. Substantially identical variance requests may not be re-submitted for a period of one (1) year after the final decision.
- G. Modification of a Variance. The procedure for modification of a variance already approved or a request for a change of conditions attached to an approval shall be the same as for a new application.
- H. Administrative Variance Approvals. The Zoning Administrator is authorized to hear variance requests for minor screening, landscaping, fencing provisions related to type, location and height of these accessory uses and for modifications of setback or lot width requirements of not more than 10%. Upon receipt of an application, a public hearing shall be scheduled before the Zoning Administrator or his/her designee. The property would then be posted with a notice of the request and hearing date at least seven (7) days before the hearing. The applicant and adjoining property owners shall be given notice of the hearing date and time at least ten (10) days prior to the public hearing.

In determining his/her decision, the Zoning Administrator or his/her designee, shall follow the Board of Appeals procedures outlined in Section 165-02 A through G of this Section. A written decision shall be provided to the applicant within thirty (30) days of the closing of the public hearing unless an extension, detailed in writing, is agreed upon by all parties. At the hearing, any party may appear in person or by agent or attorney. Any party adversely affected by a decision of the Zoning Administrator or his/her designee may appeal to the Board of Appeals. The appeal must be filed within thirty (30) days of the Zoning Administrator's decision. The Zoning Administrator would then schedule a new hearing before the Board of Appeals which would be heard in the same manner as an original application to the Board of Appeals (de novo).

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§165-93 SPECIAL EXCEPTIONS

A. General. Recognizing that a special exception is a use legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone, the Board of Appeals shall have the power to hear and decide special exception requests in accordance with the provisions of the Town of Bel Air Development Regulations. Additionally, prior to approving a special exception request, the Board of Appeals must find that there would be no adverse impact caused by approval of the request.

B. Conditions of Approval

In connection with any approval of any request, the Board of Appeals may require the installation of such devices and methods of operation as may be reasonably required to prevent adverse effects from the proposed use, including but not limited to, hazardous or congested traffic conditions, odor, smoke, dust, gas, noise or other similar nuisances. The Board of Appeals may impose such other conditions as may be necessary to protect adjacent properties and neighborhoods from adverse effects of the use.

The conditions may include but are not limited to:

1. Prohibition against outside signs or advertising structures except professional or directional signs.
2. Limitation of signs as to size, type, color, location or illumination.
3. Specification of the amount, direction and location of outdoor lighting.
4. Number and location of off-street parking and loading space.
5. Requirements related to the building construction, design and materials including, but not limited to, roof design, building connection and disconnection with other units, location of exits, doors and windows and cleaning or painting of building.
6. Requirements related to paving, shrubbery, landscaping, ornamental or screening fences, walls and hedges.

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7. Specification of permitted hours of operation.
8. Prohibition of structural changes.
9. Requirements related to the control and elimination of smoke, dust, gas, noise or vibration caused by the use.
10. Requirements for termination of a use, based on a lapse of time, as permitted by law.
11. Specification of required improvements to ingress and egress.
12. Specification of required improvements to street frontage.
13. Requirements of specific fire and safety improvement.
14. Requirements for improvements to intersections adjacent to the proposed development.

In authorizing a special exception, the Board of Appeals shall require such guarantee or bond as it may deem necessary to assure compliance with all the conditions imposed on the approval.

- C. **Lapse of Special Exception.** After the Board of Appeals has approved a special exception, the special exception so approved or granted shall lapse two (2) years from the date of the final decision. However no lapse shall take place if the change of use has taken place, if the construction of buildings has been completed or, if a good faith commencement of construction has occurred and substantial, visible construction has taken place in accordance with the plans for which such special exception was granted. Within thirty (30) days of the expiration of the two (2) year period, or any extension previously granted, the property owner may submit an application to the Board of Appeals requesting an additional extension or extension for a period of one (1) year. The Board of Appeals may grant an extension upon good cause shown.
- D. **Existing Special Exception - Modifications and Amendments.** The requirements of the Town of Bel Air Development Regulations shall not apply to any special exception approved prior to enactment of the Town of Bel Air Development Regulations or amendments thereto. Any modifications

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or amendments to a special exception approved prior to the enactment of the Town of Bel Air Development Regulations, which are not in accordance with the terms of the Town of Bel Air Development Regulations, shall require the approval of the Board of Appeals pursuant to Section 165-93.

- E. Revocation of Permits. Special Exception approvals may be revoked by the Board of Town Commissioners in accordance with the provisions of Section 165-20.E herein for failure to comply with conditions of approval or applicable regulations.
- F. Guarantees. The Board of Appeals may require a bond, irrevocable letter of credit, or other appropriate guarantee as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions of the special exception.
- G. Discontinuance of Use. When an approved special exception of a building, structure or land has ceased operation for one (1) year, the special exception approval of the building, structure or land shall automatically expire.
- H. Resubmission of Special Exception. Substantially identical special exception requests may not be re-submitted for a period of one (1) year after the final decision.
- I. Modification of Special Exception. The procedure for modification of a special exception already approved, or a request for a change of conditions attached to an approval, shall be the same as for a new application.

§165-94 SPECIAL DEVELOPMENT REVIEW AND APPROVAL

- A. General. Recognizing that certain uses are compatible with other uses permitted in a district, with or without the imposition of conditions, the special developments listed in the district regulations of the Town of Bel Air Development Regulations may be permitted in accordance with the procedures set forth in this section. A development plan shall be submitted for an approval of a special development. The development plan should be considered a part of a special development. special development shall be considered by the Planning Commission to determine the compliance of the development with the appropriate regulations. The Planning Commission may approve, with or without conditions, or deny the request for special development approval.

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B. Specific Regulations

The following procedures shall be followed in review of application for special development approvals:

1. Applicant shall submit a formal application stating the request, along with plans as prescribed in the Town checklist. (See Appendix A) Additionally, applicants shall provide the name and mailing address of all adjoining property owners.
2. A preliminary site plan complying with the requirements of Chapter 165, Article IV of the Town of Bel Air Development Regulations shall accompany an application for approval of a special development under this Article, together with such information as may be required for a determination of the nature of the proposed use and its effect on the Town of Bel Air Comprehensive Plan, the neighborhood, and surrounding properties.
3. Request shall be reviewed by the appropriate Town, County and State agencies, as appropriate.
4. Public hearing shall be scheduled before the Planning Commission. Notice of hearing placed in local paper for two consecutive weeks. First notice shall appear at least fourteen (14) days prior to hearing. Property shall be posted ten (10) days prior to the public hearing. Written notice shall be mailed to all abutting property owners (based on information provided by applicant) ten (10) days prior to public hearing.
5. Public hearing held.
6. The special development is approved, denied, or approved subject to conditions. The Planning Commission may table the matter for further discussion or to gather additional information. In any case, a decision shall be rendered within sixty (60) days of the first hearing date unless an extension is agreed upon by the applicant and the Town.

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- C. Conditions of Approval. The Planning Commission may impose conditions upon an approval of a special development request. The conditions may include, but are not limited to:
1. Requirements related to the building construction, design and materials including, but not limited to, roof design, building connection and disconnection with other units, enclosure, location of exits, doors and windows and cleaning or painting of building.
 2. Requirements related to paving, shrubbery, landscaping, ornamental or screening fences, walls and hedges.
 3. Specification of the amount, direction and location of outdoor lighting.
 4. Specification of permitted hours of operation.
 5. Limitations on the location of signs.
 6. Prohibition of structural changes.
 7. Requirements related to the control and elimination of smoke, dust, gas, noise or vibration caused by the use.
 8. Requirements for termination of a use, based on a lapse of time, as permitted by law.
 9. Specification of required improvements to ingress and egress.
 10. Specification of required improvements to street frontage.
 11. Requirements for specific fire and safety improvements.
 12. Requirements for improvements to intersections and roadways affected by traffic generated by the proposed development. Developers shall maintain level of service standards as set forth in Chapter 165, Article IV, Section 165-118.D, Circulation System Design.
 13. Requirements for parking lot, property maintenance and security, including litter and trash removal.

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Unless otherwise specified in the Town of Bel Air Development Regulations, or specified as a condition of approval, the height limits, yard spaces, lot areas and sign requirements shall be the same as for other uses in the district in which this special development is located.

- D. Lapse of Special Development Approval. After the Planning Commission has approved a special development, the special development approval shall lapse two (2) years from the date of the final decision. However no lapse shall take place if the change of use has taken place or if the construction of the building has been completed, or if a good faith commencement of construction has occurred and substantial, visible construction has taken place in accordance with the plans for which such special development was granted. Within thirty (30) days of the expiration of the two year period, or any extension previously granted, the property owner may submit an application to the Planning Commission requesting an extension for a period of one (1) year. The Planning Commission may grant an extension upon good cause shown.
- E. Existing Special Developments. The requirements of the Town of Bel Air Development Regulations shall not apply to a pre-existing conditional use or special development approval prior to enactment of the Town of Bel Air Development Regulations or amendments thereto.
- F. Revocation of Approvals. Special Development approvals may be revoked by the Board of Town Commissioners in accordance with the provisions of Section 165-20.E herein for failure to comply with conditions of approval or applicable regulations.
- G. Guarantees. The Town may require a bond, irrevocable letter of credit, or other appropriate guarantee as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions of the special development.
- H. Discontinuance of Use. When an approved special development use has ceased operation for one (1) year, the special development approval for the use of a building, structure or land shall automatically expire.

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- I. Modification or Amendment of Approval. A special development approval may not be transferred to another property nor may the use category be changed without further approval of the Planning Commission. A building expansion of 10% or 2,500 square feet, whichever is less, on a previously approved special development shall require further approval of the Planning Commission. The procedure for such a request shall be the same as for a new application.
- J. Resubmission of Special Development. Substantially identical special development requests may not be resubmitted for a period of one (1) year after the final decision.

§165-95 APPEALS TO COURT. Any person adversely affected by a special development decision of the Planning Commission may appeal to the Circuit Court of Harford County in the manner set forth in Section 4.08. Article 66B, Annotated Code of MD, as amended from time to time. The Court may affirm, reverse, vacate or modify the decision complained of in the appeal. Such appeal shall be filed within thirty (30) days of the Planning Commission's decision.

§165-96 FEES. A fee shall be charged for filing and handling each application or appeal provided for in this Article, in an amount to be determined from time to time by the Board of Town Commissioners.

§165-97 INTERPRETATION OF ZONING MAP. The Board of Town Commissioners may authorize, after notice to the owners of the properties affected, and/or by a notice published in a paper of general circulation in Bel Air, and after public hearing, adjustments of district boundaries as follows:

- A. Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot lines as shown on the zoning maps, the Board of Appeals shall interpret the maps in such a way as to carry out the intent and purpose of the Town of Bel Air Development Regulations for the particular section or district in question.
- B. The Board of Appeals may permit the extension of a district, where the boundary line of a district divides a lot held in a single ownership on the effective date of the Town of Bel Air Development Regulations, by not more than one hundred (100) feet beyond the boundary line.

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§165-98 NON-CONFORMING USES. The Board of Appeals may hear and decide requests relating to nonconforming uses, buildings and structures as authorized and described in Chapter 165, Article III and Chapter 165, Article 11, Section 10 of the Town of Bel Air Development Regulations.

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