

## MEMORANDUM

October 4, 2021

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM: Naeem M. Mia, Legislative Analyst

SUBJECT: **Oversight Worksession:** Board of Appeals

### **Expected Attendees:**

- Barbara Jay, Executive Director, Board of Appeals
- John H. Pentecost, Chair, Board of Appeals
- Phil Weeda, Office of Management and Budget

### **Summary**

Due to the ongoing COVID-19 pandemic, the Council's FY22 budget review process included a consent calendar approval of several department/office budgets with the plan that those departments/offices would be scheduled for a Committee oversight review session in the Fall of 2021.

The purpose of these oversight sessions is to:

- 1) provide the Committees with an opportunity to meet with Department/Office Directors;
- 2) receive updates on key programs or initiatives; and
- 3) and review any relevant spending or performance data.

Executive Director Barbara Jay and Board Chair John H. Pentecost are available to discuss the recent activities of the Board, including the impact of the COVID-19 pandemic on department operations. The department's FY22 Approved Operating Budget is on circles 1-4.

### **Mission Statement**

The mission of the Board of Appeals is to assist the public in understanding, and to hear and decide, in a quasi-judicial setting, inquiries and applications that arise mainly under Chapter 59 of the Montgomery County Code, but also under various other Code Sections, for variances, administrative appeals of certain decisions of County agencies, and for oral argument on conditional use decisions or modification of special exceptions.

## **Duties and Responsibilities of the Board**

The Board of Appeals has authority to hear and decide cases involving certain land use issues, including modification of special exceptions filed or decided before October 30, 2014, and variances from the development standards or other requirements of the Zoning Ordinance. The Board also hears and decides Administrative Appeals from actions by the County government (as specified by the County Code). The Board applies the Zoning Ordinance Standards applicable to all such cases. The Board has County-wide jurisdiction, except for the municipal corporations of Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg and Washington Grove.

## **Structure of the Board**

The Board of Appeals is a five member quasi-judicial body. The County Council appoints the members of the Board of Appeals, who serve staggered four-year terms and may be reappointed. Board members cannot serve more than two full terms (but can serve more than eight years if initially appointed to fill a mid-term vacancy), and not more than three of the five members can be from the same political party.

The Board holds public hearings on Wednesdays, and worksessions usually every other Wednesday. All meetings are open to the public except when legal advice or personnel matters are discussed. We encourage the public to participate at hearings, but the worksessions are for members to discuss and decide cases that already have had public hearings. Therefore, while worksessions are open to the public, public participation is generally limited at worksessions.

## **Current Board Members**

John H. Pentecost, Chair  
Bruce Goldensohn, Vice Chair  
Mary Gonzales  
Richard Melnick  
Caryn Hines

### This packet contains:

1. FY22 Approved Operating Budget – Board of Appeals

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# Board of Appeals

## APPROVED FY22 BUDGET

\$582,520

## FULL TIME EQUIVALENTS

3.50

 BARBARA JAY, EXECUTIVE DIRECTOR

## MISSION STATEMENT

The mission of the Board of Appeals is to implement the flexibility provided in the Zoning Ordinance as approved by the County Council, and to assist County residents in understanding and participating in the variance, administrative appeal, special exception modification, and conditional use appeal processes.

## BUDGET OVERVIEW

The total approved FY22 Operating Budget for the Board of Appeals is \$582,520, an increase of \$23,675 or 4.24 percent from the FY21 Approved Budget of \$558,845. Personnel Costs comprise 93.78 percent of the budget for three full-time position(s) and no part-time position(s), and a total of 3.50 FTEs. Total FTEs may include seasonal or temporary positions and may also reflect workforce charged to or from other departments or funds. Operating Expenses account for the remaining 6.22 percent of the FY22 budget.

Consistent with the County Charter, the County Executive makes recommendations on the operating budget for all County departments, offices and agencies. However, recognizing the Charter-designed roles, the Executive defers significantly to the Legislative and Judicial Branch agencies. Questions regarding the approved budgets for Legislative Branch departments should be directed to Mary Jane Berry, 240-777-7930.

## COUNTY PRIORITY OUTCOMES

While this program area supports all seven of the County Executive's Priority Outcomes, the following is emphasized:

 **Effective, Sustainable Government**

## PROGRAM CONTACTS

Contact Barbara Jay of the Board of Appeals at 240.777.6604 or Philip Weeda of the Office of Management and Budget at 240.777.2780 for more information regarding this department's operating budget.

## PROGRAM PERFORMANCE MEASURES

Performance measures for this department are included below (where applicable). The FY21 estimates reflect funding based on the FY21 Approved Budget. The FY22 and FY23 figures are performance targets based on the FY22 Approved Budget and funding for comparable service levels in FY23.

Measure	Actual FY19	Actual FY20	Estimated FY21	Target FY22	Target FY23
<b>Program Measures</b>					
Number of Administrative Appeals decided	10	7	7	7	7
Average days to issue written Administrative Appeals decisions (within 45 days of close of record unless extended) <sup>1</sup>	23	12	12	12	12
Number of Variances decided	41	31	31	31	31
Average days to issue Variance decision (within 30 days of close of record unless extended) <sup>2</sup>	10	13	13	13	13
Number of Conditional Use cases decided	1	2	2	2	2
Average days to issue Conditional Use decision (must issue within 30 days of voting on the matter unless extended)	15	16	16	16	16
Number of Circuit Court appeals processed	4	1	1	1	1
Number of Administrative Actions taken <sup>3</sup>	130	101	101	101	101

<sup>1</sup> Board of Appeals Rule 9.1 requires issuance of administrative appeal opinions within 45 days of close of record.

<sup>2</sup> Board of Appeals Rule 9.1 requires issuance of variance opinions within 30 days of close of record.

<sup>3</sup> Matters considered and/or decided at worksessions include, but are not limited to, preliminary motions in Administrative Appeals, requests for major modifications (following the issuance of a report and recommendation by the Office of Zoning and Administrative Hearings) and administrative modifications of existing special exceptions, requests for by-right hearings, requests for oral argument regarding appeals of conditional use decisions, requests for the revocation of special exceptions, requests for the reconsideration of earlier Board decisions, requests for show cause hearings, complaints regarding the operation of special exceptions, inspection reports from the Department of Permitting Services and the Department of Housing and Community Affairs regarding such complaints, and the submission of documents fulfilling various Board-imposed reporting requirements.

## PROGRAM DESCRIPTIONS

### ☀ Zoning Related Hearings and Administrative Appeals

The Board of Appeals hears requests for variances as provided in the Zoning Ordinance. Development standards for each zone are set by the Zoning Ordinance. Variances from these standards require approval by the Board. In addition, the Board hears appeals of conditional uses decided by the Hearing Examiner, as provided in the Zoning Ordinance. The Board of Appeals also holds hearings and rules on appeals from administrative actions of certain governmental departments and agencies, as provided in the County Code. Finally, the Board considers modifications to those special exceptions that were filed or approved before the October 30, 2014 changes to the Zoning Ordinance.

## BUDGET SUMMARY

	Actual FY20	Budget FY21	Estimate FY21	Approved FY22	%Chg Bud/App
<b>COUNTY GENERAL FUND</b>					
<b>EXPENDITURES</b>					
Salaries and Wages	423,152	417,896	428,664	441,385	5.6 %
Employee Benefits	102,015	104,710	99,960	104,898	0.2 %
<b>County General Fund Personnel Costs</b>	<b>525,167</b>	<b>522,606</b>	<b>528,624</b>	<b>546,283</b>	<b>4.5 %</b>

## BUDGET SUMMARY

	Actual FY20	Budget FY21	Estimate FY21	Approved FY22	%Chg Bud/App
Operating Expenses	22,547	36,239	23,488	36,237	—
<b>County General Fund Expenditures</b>	<b>547,714</b>	<b>558,845</b>	<b>552,112</b>	<b>582,520</b>	<b>4.2 %</b>
PERSONNEL					
Full-Time	3	3	3	3	—
Part-Time	0	0	0	0	—
FTEs	3.50	3.50	3.50	3.50	—
REVENUES					
Board of Appeals Fees	128,984	164,413	158,064	158,064	-3.9 %
Other Charges/Fees	4,950	0	0	0	—
<b>County General Fund Revenues</b>	<b>133,934</b>	<b>164,413</b>	<b>158,064</b>	<b>158,064</b>	<b>-3.9 %</b>

## FY22 APPROVED CHANGES

	Expenditures	FTEs
<b>COUNTY GENERAL FUND</b>		
<b>FY21 ORIGINAL APPROPRIATION</b>	<b>558,845</b>	<b>3.50</b>
<b><u>Other Adjustments (with no service impacts)</u></b>		
Increase Cost: FY21 Compensation Adjustment	12,316	0.00
Increase Cost: Annualization of FY21 Personnel Costs	5,570	0.00
Increase Cost: FY22 Compensation Adjustment	4,933	0.00
Increase Cost: Retirement Adjustment	858	0.00
Decrease Cost: Print and Mail Adjustment	(2)	0.00
<b>FY22 APPROVED</b>	<b>582,520</b>	<b>3.50</b>

## FUNDING PARAMETER ITEMS

CC APPROVED (\$000S)

Title	FY22	FY23	FY24	FY25	FY26	FY27
<b>COUNTY GENERAL FUND</b>						
<b>EXPENDITURES</b>						
<b>FY22 Approved</b>	<b>583</b>	<b>583</b>	<b>583</b>	<b>583</b>	<b>583</b>	<b>583</b>
No inflation or compensation change is included in outyear projections.						
<b>Labor Contracts</b>	<b>0</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>
These figures represent the estimated annualized cost of general wage adjustments, service increments, and other negotiated items.						
<b>Subtotal Expenditures</b>	<b>583</b>	<b>592</b>	<b>592</b>	<b>592</b>	<b>592</b>	<b>592</b>

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