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Rules and Regulations for Development Approval and Enforcement
Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission

Rules and Regulations (Chapters and Rule No.)	Page
CHAPTER I: Authority, Purpose and Scope of Rulemaking	
1. Authority, Purpose and Scope.	2
CHAPTER II: Definitions	
2. Definitions.	3
CHAPTER III: Public Ethics	
3. Public Ethics.	7
CHAPTER IV: Applications for Development Approval	
4. General Filing Requirements for Applications.	8
5. Special Filing Requirements for Site Plan Applications and Amendments.	9
6. Staff Evaluation of Application.	10
CHAPTER V: Rules of Procedure for Public Hearings on Development Applications	
7. Policy and Nature of Public Hearings by the Planning Board.	11
8. Public Hearings by the Planning Board on Applications.	12
9. Planning Board Vote on Certain Applications.	20
10. Planning Board Action By Consent Agenda.	23
11. Final Action.	27
CHAPTER VI: Certified Site Plans	
12. Preparation, Notice and Approval of a Certified Site Plan.	28
CHAPTER VII: Enforcement of Planning Board Actions	
13. Initiating Enforcement Actions.	29
14. Preliminary Matters in Enforcement Actions.	30
CHAPTER VIII: Rules of Procedure for Hearings in Enforcement Actions	
15. General Rules for Hearings in Enforcement Actions.	31
16. Special Rules for Planning Board Hearings in Enforcement Actions.	32
17. Special Rules for Proceedings Before A Hearing Officer in Enforcement Actions.	33
18. Planning Board Decision in Enforcement Actions.	34
CHAPTER IX: Civil Fines and Penalties in Enforcement Actions	
19. Schedule of Civil Fines and Penalties for Violations.	35
CHAPTER X: Ex Parte Communications of the Planning Board	
20. Outside Communications by Members of the Planning Board.	36
CHAPTER IX: Miscellaneous Regulations	
21. Time.	38
22. Disclaimer of Maryland APA.	38
23. Parliamentary Rules.	38
24. Severability.	38

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CHAPTER I
AUTHORITY, PURPOSE AND SCOPE OF RULEMAKING

1. Authority, Purpose and Scope.

- 1.1. These rules and regulations (the “Rules”) are adopted by the Montgomery County Planning Board (the “Planning Board”) of the Maryland-National Capital Park and Planning Commission (the “Commission”) pursuant to the jurisdiction and authority set forth under Article 28 of the Annotated Code of Maryland at Section 7-111. Where applicable, certain Rules are promulgated as regulations in the manner prescribed under the Montgomery County Zoning Ordinance at Section 59-D-3.9.

- 1.2. The purpose of these Rules is to establish a reasonable and consistent process for the Planning Board and Planning Staff to consider, hear and act upon certain regulatory matters entrusted to their authority under the Regional District Act (as defined herein) and the Montgomery County Code. The Rules are grounded in the policy goals of (a) ensuring fair and impartial treatment of each applicant, respondent, or party who is interested or may be aggrieved by the action; (b) maintaining the orderly and efficient conduct of a public proceeding convened to decide such matters; and (c) complying with applicable state, federal and local laws.

- 1.3. These Rules apply to decisions made by the Planning Board with respect to (a) any Application (as defined herein) filed or accepted for filing on or before [the effective date] and (b) any matter of alleged Violation (as defined herein) on or after [the effective date]. The Rules do not apply to any advisory, quasi-legislative, executive or other administrative matter that does not pertain to an Application or Violation, and do not apply to any proceeding conducted according to Chapter 22A of the Montgomery County Code.

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CHAPTER II
DEFINITIONS

2. Definitions.

2.1. Incorporation and Precedence of Certain Definitions.

Except as otherwise expressly provided to the contrary in these Rules, any term defined under Chapter 50 or Chapter 59 of the Montgomery County Code also applies for the purpose of these Rules. In the event of any conflict between the respective definitions prescribed under Chapter 50 and Chapter 59, the definition under Chapter 59 prevails. In the event of any conflict between (a) the definition of any term provided in these Rules and (b) a definition for that term prescribed under Chapter 50 or Chapter 59, respectively, the definition provided in these Rules prevails.

2.2. Other Definitions.

2.2.1. “Acceptance” (of an Application) means the written decision made by an authorized member of the Planning Staff to accept an Application for administrative consideration because it complies in every material respect with the requirements imposed under the Zoning Ordinance, the Subdivision Regulations, these Rules, and the Manual.

2.2.2. “Amendment” means a decision by the Planning Board to alter or amend one or more of the specific terms, requirements, limitations or conditions of any Planning Board Action previously approved.

2.2.3. “Applicant” means one or more persons with a financial, contractual, or proprietary interest in a Subject Property, or their respective agents, who are entitled and actually file an Application.

2.2.4. “Application” means each (and every) part of a written request filed with the Commission by or on behalf of an Applicant to solicit the initial approval, modification, or Amendment of a Planning Board Action according to the provisions of the Montgomery County Code applicable to the following:

- (a) A “Project Plan” for approval of proposed development that is filed according to Section 59-D-2.12 of the Zoning Ordinance;
- (b) A “Preliminary Plan” (of Subdivision or Re-subdivision) for approval of proposed development that is filed according to Section 50-34 of the Subdivision Regulations;
- (c) A “Pre-Preliminary Plan” for approval of a proposed development that is filed according to Section 50-33A of the Subdivision Regulations;
- (d) A “Certified Site Plan” for approval of a Site Plan Application that is filed according to Section 59-D-3 of the Zoning Ordinance;
- (e) A “Record Plat” for a proposed development that is filed according to Section 50-8 of the Subdivision Regulations;
- (f) A “Special Building Permit” for a proposed development that is filed according to the requirements for issuance of a permit according to Article IV, Chapter 8, of the

1 Montgomery County Code based upon the favorable determination by the Planning
2 Board concerning adequate public facilities.

3 2.2.5. “Binding Element” means a term, condition, limitation or requirement expressed in any
4 Planning Board Action to provide that such term, condition, limitation or requirement may
5 only be modified by the approval of an Amendment.

6 2.2.6. “Business Day” means a weekday that is not a Commission holiday.

7 2.2.7. “Certificate of Compliance” means a written certificate give under oath taken by an
8 Applicant to support an Application and to attest, to the best of the affiant’s knowledge,
9 information and reasonable belief, as follows:

10 a. The Application conforms to all non-illustrative elements of the approved
11 Development Plan that applies to the Subject Property;

12 b. The Application conforms to each binding element of the approved Schematic
13 Development Plan that applies to the Subject Property;

14 c. The Application conforms to the approved Diagrammatic Plan that applies to the
15 Subject Property pursuant to Division D-4 of the Zoning Ordinance;

16 d. The Application conforms to [all non-illustrative elements of] the approved
17 Project Plan that applies to the Subject Property;

18 e. The Application conforms to each Binding Element imposed by the Planning
19 Board that applies to the Subject Property;

20 f. The Application conforms to the approved Preliminary Plan that applies to the
21 Subject Property; and,

22 g. The Application conforms to the program of development proposed under each
23 and every other Application (including any Application for Amendment) that is
24 currently filed by the Applicant, or pending Acceptance or Approval, with
25 respect to a development project that includes or otherwise relates to the Subject
26 Property.

27 2.2.8. “Certified Site Plan” means the compilation of documents issued to evidence the final
28 approval by the Planning Board of a Site Plan Application and that is prepared and issued
29 according to the specifications and requirements set forth in Rule [12] and the Manual.

30 2.2.9. “Chairman” means the chairman of the Planning Board appointed according to Section
31 7-111 of the Regional District Act or, as the applicable case may be, another member of the
32 Planning Board presiding in that capacity according to these Rules.

33 2.2.10. “Consent Agenda” means a number of Planning Board Actions compiled and presented
34 together for consideration and approval by a single vote according to these Rules with
35 respect to (a) approval of certain Amendments, (b) adoption of Planning Board resolutions,
36 or (c) approval of Record Plats.

37 2.2.11. “Day” means a calendar day.

- 1 2.2.12. “District Council” means the County Council of Montgomery County, Maryland, sitting
2 in its administrative capacity as the District Council for that portion of the regional district
3 lying within Montgomery County, Maryland, according to Section 8-101(a) of the Regional
4 District Act.

- 5 2.2.13. “Manual” means the “Manual of Development Review Procedures for Montgomery
6 County, Maryland” adopted as rules by the Planning Board dated October __, 2006, as
7 amended from time to time.

- 8 2.2.14. “Planning Board” means the Montgomery County Planning Board of the Maryland-
9 National Capital Park and Planning Commission acting in that capacity as provided
10 generally under Section 7-111 of the Regional District Act.

- 11 2.2.15. “Planning Board Action” means the approval by the Planning Board, with or without
12 conditions, or disapproval of any Application, or the imposition by the Planning Board of a
13 Plan of Compliance or Corrective Order based on a determination of Violation made
14 according to these Rules.

- 15 2.2.16. “Planning Staff” means those employees of the Commission who are assigned to process,
16 review, report or make recommendations of any sort to the Planning Board or Planning
17 Director regarding the approval or disapproval of any Application, County permit required
18 for development, or an alleged Violation.

- 19 2.2.17. “Respondent” means the Applicant, owner of a property subject to an alleged Violation,
20 and any other party with actual notice, or charged with constructive notice, of a complaint or
21 alleged Violation given according to Rule [13].

- 22 2.2.18. “Site Plan Application” means an Application for approval of a Certified Site Plan
23 required according to Section 59-D-3 of the Zoning Ordinance or required by condition
24 imposed under the approval of a Project Plan or Preliminary Plan.

- 25 2.2.19. “Site Plan Signature Set” means the compilation of documents proposed by the Applicant
26 for approval as a Certified Site Plan in accordance with Rule [15].

- 27 2.2.20. “Subject Property” means all or part of an assemblage of property that is the subject of
28 an Application for approval by Planning Board Action as provided under these Rules.

- 29 2.2.21. “Hearing Officer” means the administrative tribunal appointed and authorized by the
30 Planning Board to conduct certain hearings on an alleged Violation according to Rule [17].

- 31 2.2.22. “Regional District Act” means 1927 Maryland Laws Chapter 448, codified as a public
32 general law under Article 28 of the Annotated Code of Maryland, as amended from time to
33 time.

- 34 2.2.23. “Subdivision Regulations” mean those regulations of subdivision applicable in
35 Montgomery County and codified under Title 50 of the Montgomery County Code, as
36 amended from time to time, pursuant to the authority of the Regional District Act.

- 37 2.2.24. “Violation” means an unauthorized or unlawful deviation from any term, condition,
38 limitation or requirement of any Planning Board Action that is actionable under Section

1 7-116(h) of the Regional District Act, Section 50-41 of the Subdivision Regulations,
2 Section 59-A-1.3 or Section 59-D-6 of the Zoning Ordinance.

3 2.2.25. "Zoning Ordinance" means the Zoning Ordinance codified under Title 59 of the
4 Montgomery County Code, as adopted and amended from time to time, by the Montgomery
5 County District Council pursuant to the authority set forth under the Regional District Act.

1 **CHAPTER III**
2 **PUBLIC ETHICS**

3 **3. Public Ethics.**

4 **3.1. Policy.**

5 As provided generally under the Maryland Public Ethics Law, the people have the right to be
6 assured that impartiality and independent judgment will be maintained in the consideration of any
7 Application or alleged Violation. In order to assure the people's confidence and trust in the
8 conduct of public business, the Commission and Planning Board have established as their
9 paramount policy that members of the Planning Board and Commission staff must, at all times and
10 in all respects, observe an affirmative obligation to disclose any actual, apparent or potential
11 conflict of interest pertaining to any Application or alleged Violation that is subject to the
12 jurisdiction of the Planning Board.

13 **3.2. Planning Board.**

14 Members of the Planning Board must comply with the applicable provisions of (a) the Maryland
15 Public Ethics Law, (b) Section 2-115 of the Regional District Act, and (c) these Rules.

16 **3.3. Planning Staff.**

17 Staff members who provide information or participate otherwise in connection with proceedings
18 of the Planning Board undertaken according to these Rules must comply with the Commission's
19 public ethics practices and procedures as promulgated from time to time.

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CHAPTER IV
APPLICATIONS FOR DEVELOPMENT APPROVAL

4. General Filing Requirements for Applications .

[Reserved.]

1 5. Special Filing Requirements for Site Plan Applications and Amendments.

2 [Reserved.]

1 6. Evaluation of Application.

2 [Reserved.]

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CHAPTER V
RULES OF PROCEDURE FOR PUBLIC HEARINGS
ON DEVELOPMENT APPLICATIONS

7. Policy and Nature of Public Hearings by the Planning Board.

Each public hearing convened under the jurisdiction of the Planning Board will be of an informal nature, yet designed in such a way that the evidence and facts relevant to a particular Application will become available to the Planning Board in a manner that is both efficient and fair. It is the policy of the Planning Board to provide reasonable notice to the Applicant and the public of the meeting at which the Board will consider the Application, an opportunity to comment and/or attend that meeting to present views and information concerning each Application, and an opportunity to know the information and considerations on which the Planning Board bases its decision concerning the Application. The Planning Board makes decisions consisting of conclusions that are based on findings related to the standards, policies, and considerations applicable to the particular type of decision. Furthermore, such findings should be supported by information available to the Board, including information contained in an application, staff report, or other documents included in the record, or expressed in any testimony presented before the Planning Board, or otherwise introduced by a member of the Planning Board from his or her personal observations, knowledge, or experience.

1 **8. Public Hearings by the Planning Board on Applications.**

2 Except as otherwise provided for any Application for Amendment that is approved by Consent Agenda
3 according to Rule [10], the Planning Board will afford an opportunity for comment and may convene a
4 public hearing as provided in this Rule before acting on any Application.

5 **8.1. Discretion to Receive Testimonial Evidence During Hearing.**

6 Depending on the nature and scope of an Application, the complexity of factual or legal matters at
7 issue, and whether or not any substantive opposition is evidenced of record and properly before
8 the Planning Board at that time, the Planning Board has discretion to convene a hearing according
9 to Rule [8.10] to receive testimonial evidence from the public or, in other appropriate
10 circumstances, may elect to conduct the public hearing by receiving written testimony and
11 comments according to Rule [8.11] in lieu of receiving testimonial evidence.

12 **8.2. Presiding Officer.**

13 The Chairman is the presiding officer at any public hearing held by the Planning Board according
14 to these Rules, and has broad discretion to order the conduct of Planning Board hearings in any
15 manner provided under these Rules that affords due process, develops a complete administrative
16 record, and provides a reasonable opportunity for each interested party to be heard in an
17 expeditious fashion. In the event the Chairman is absent for any reason, the Vice-Chairman will
18 preside.

19 **8.3. Scheduling Subject to Staff Report.**

20 The public hearing on any Application will not be scheduled until such time as the staff report
21 pertaining to that Application has been published for public review in accordance with the
22 Manual. The date, time and location of each hearing will be established in the discretion of the
23 Chairman; provided, that the date of any hearing scheduled will be established in consultation with
24 the Applicant and must not be less than ten (10) nor more than 30 days after the date the staff
25 report is published.

26 **8.4. Notice of Public Hearings.**

27 Not less than ten (10) days prior to the public hearing on any Application, the Planning Staff will
28 provide written notice of the date scheduled for the Planning Board hearing regarding that
29 Application. The Planning Staff will provide the written notice required for this purpose as
30 required according to the Manual.

31 **8.5. Burden and Standard of Proof.**

32 The Applicant bears the burden of proving by a preponderance of evidence that is substantial,
33 relevant, competent, and reliable that (when considered as a whole against all the relevant
34 evidence) is legally sufficient to establish that its Application warrants Planning Board approval,
35 and qualifies in all respects for that approval in accordance with applicable law.

36 8.5.1. Without limiting the generality of this Rule, the Applicant for approval of a Site Plan
37 Application bears the burden of proving that it will achieve a maximum of compatibility,
38 safety, efficiency, and attractiveness, and the Planning Board must not approve the Site Plan
39 Application unless it expressly finds that the Applicant has met this burden. The fact that

1 the Planning Board finds that a Site Plan Application complies with all applicable
2 development standards or other specific requirements of the applicable zone does not, by
3 itself, create a presumption that the Site Plan Application is compatible with surrounding
4 land uses, nor does it legally require the Planning Board to approve the Site Plan
5 Application.

6 8.5.2. [Reserved.]

7 **8.6. Certain Rules of Evidence.**

8 Public hearings convened by the Planning Board according to these Rules will not conform strictly
9 to the rules of evidence or procedure applicable to judicial proceedings. In the discretion of the
10 Chairman, relevant evidence may be admitted if it is the type which possesses probative value
11 commonly accepted by reasonably prudent persons in the conduct of their affairs. The rules of
12 privilege are effective to the extent recognized by law for this purpose. Hearsay evidence, if
13 relevant, will normally be accepted into the record. Objections to testimony will only be sustained
14 for the most compelling reasons, so that the purpose of providing wide latitude to witnesses will
15 be served. Any objection to testimony must be made at the time the testimony is presented, or
16 otherwise it is waived. The Planning Board may take administrative notice of matters in common
17 knowledge, or matters falling within its experience and expertise in reaching a decision on a case.

18 **8.7. Objections and Exceptions to Staff Report.**

19 No later than five (5) days prior to a public hearing convened according to these Rules to consider
20 any Application, the Applicant is required to provide written notice to the Planning Director that
21 clearly identifies each objection or exception taken with respect to each factual finding or legal
22 conclusion as proposed in the Staff Report pertaining to any Application, and to support each
23 objection or exception taken by an offer of proof, legal argument, or other evidence upon which it
24 is grounded. Any failure to express an exception or objection in this manner may (but need not)
25 be deemed by the Planning Board as a waiver or admission of the matter as asserted in the Staff
26 Report. The Planning Staff will publish each notice of exception or objection in advance of the
27 relevant hearing as provided in the Manual.

28 **8.8. Pre-Hearing Disclosure of Technical Information and Legal Memoranda.**

29 8.8.1. Applicant. No later than seven (7) days prior to a public hearing convened according to
30 these Rules to consider any Application, the Applicant must give written notice to the
31 Planning Director if it intends to rely or introduce during the hearing any of the following:

- 32 (a) any report of a traffic study, environmental impact analysis, topographical or
33 archeological survey, or similar report pertaining to the technical, historical or physical
34 characteristics of the Subject Property, unless the report was furnished to Planning
35 Staff prior to issuance of the Staff Report;
- 36 (b) reasonable written notice of any expert testimony to be presented during the hearing;
37 and,
- 38 (c) any legal memorandum or argument to be considered by the Planning Board in
39 connection with the hearing.

1 Except for good cause shown, if the Applicant fails to comply timely with the requirements
2 of this Rule, in the discretion of the Planning Board, the subject report, expert testimony or
3 legal memorandum may be excluded from acceptance into the record and the Planning
4 Board will not consider it during the hearing or, if substantial justice compels the
5 consideration of the report, expert testimony or legal memorandum, untimely compliance
6 may be deemed as the Applicant’s request to postpone the hearing for a period of not less
7 than thirty (30) days or more than ninety (90) days. The requirements of this Rule do not
8 excuse the Applicant from submitting timely any report or legal memorandum required
9 according to the Rules or procedures under the Manual that apply for submittal or
10 Acceptance of the Application.

11 8.8.2. Other Interested Parties. Any party other than the Applicant must give written notice to
12 the Planning Director and the Applicant if they intend to rely or introduce during the hearing
13 any of the following:

14 (a) any report of a traffic study, environmental impact analysis, topographical or
15 archeological survey, or similar report pertaining to the technical, historical or physical
16 characteristics of the Subject Property, unless the report was furnished to Planning
17 Staff prior to issuance of the Staff Report;

18 (b) any expert testimony to be presented during the hearing; and,

19 (c) any legal memorandum or argument to be considered by the Planning Board in
20 connection with the hearing.

21 Except for good cause shown, the interested party must give the notice required according to
22 this Rule at a reasonable time in advance of the hearing; provided, that any notice given five
23 (5) or more days in advance of the hearing is deemed reasonable for this purpose.

24 8.8.3. Publication. The Planning Staff will publish each notice received according to this Rule
25 in advance of the relevant hearing as provided in the Manual.

26 **8.9. Rebuttal Testimony and Cross-Examination.**

27 In order to promote the ideals of an open public exchange and collaborative environment in
28 proceedings to evaluate each Application, the Planning Board will permit any party offering
29 testimony to reserve a portion of the time allotted for that testimony for rebuttal testimony, if
30 requested by the witness. The Board will judiciously limit the cross-examination of any witness
31 under circumstances where rebuttal testimony or documentary information introduced (in lieu of
32 cross-examination) is more appropriate to contest the matters asserted by the direct testimony of
33 the witness. A party entitled under law to cross-examine any witness must obtain leave to do so
34 by making a request in advance addressed to the Chairman. In the Chairman’s discretion, the
35 party requesting an opportunity to cross-examine a witness may be required to explain the basis
36 upon which cross-examination is desired, and how the introduction of rebuttal evidence (in lieu of
37 cross-examination) would cause prejudice under the circumstances. The Chairman will rule on
38 each request to cross-examine a witness, and that ruling will stand except by majority vote in the
39 affirmative cast by the remaining members of the Planning Board to overrule the Chairman’s
40 ruling. In the event a request to cross-examine is granted, the questions on cross-examination (a)
41 must be brief, (b) must pertain only to statements made by the witness, (c) must be interrogatory in
42 nature (and not argumentative), and (d) must not be preceded by statements, nor may they contain
43 allusions to personality or motives. If the Chairman rules that any question is out of order or
44 objectionable, the person asking it is obligated to withdraw the question. In the discretion of the

1 Chairman, questions propounded on cross-examination following an offer of proof may be put to
 2 the witness by the Chairman or another member of the Planning Board.

3 **8.10. Guidelines for Hearings with Testimonial Evidence.**

4 In any hearing convened where the Planning Board determines that testimonial evidence is
 5 essential or appropriate for a proper decision on any Application, the order of proceedings set forth
 6 in this Rule is established as a guideline consistent with the goals of affording due process,
 7 developing a complete administrative record, and providing a reasonable opportunity for each
 8 interested person to be heard in an expeditious fashion.

9 8.10.1. Upon convening each hearing, the Chairman should present a brief explanation of the
 10 purpose of the hearing, and afford each member of the Planning Board an opportunity to
 11 disclose for the record (in reasonable detail) the substance any outside communication as
 12 required under Rule [20].

13 8.10.2. The Chairman may establish and apply consistently limits on the time for each element of
 14 a public hearing convened according to this Rule. The time limits imposed should take into
 15 account the total amount of time available to conduct the hearing, the number of parties or
 16 interested persons who request to be heard, and the overall breadth and complexity of the
 17 matters to be considered by the Planning Board during that hearing. Unless the Chairman
 18 decides not to impose time limits for any hearing, the Chairman will announce the time
 19 limits imposed when the hearing is convened.

20 8.10.3. In most cases, the following sequence of presentations and corresponding time limits will
 21 be in order for purposes of these Rules:

<u>Guidelines for Sequence of Public Hearing</u>	Time Limit*
a. Presentation of the Staff Report	15
• Description of Project	
• Enumeration of Regulatory Standards	
• Summary of Community Feedback	
• Summary of the Staff Analysis and Recommendation	
b. Testimony of the Applicant	15
• Enumeration of Exceptions Taken With Respect to Staff Report (Required)	
c. Testimony of Government Officials	7
d. Testimony of Authorized Representatives:	7
• Civic Associations	
• Homeowners Associations	
• Recognized Civic Entities	
e. Testimony of Interested Individuals	5
f. Staff Analysis and Response to Testimony	7
g. Testimony in Rebuttal by Applicant	10
h. Testimony of Authorized Representatives in Response to	5

Applicant’s Rebuttal

- i. Testimony of Adjoining or Abutting Property Owners in Response to Applicant’s Rebuttal 5
- j. Applicant’s Closing Argument (Determined in the Discretion of the Chairman) 5

* Expressed in number of minutes.

1 8.10.4. The Chairman has discretion to limit any oral testimony that is repetitive or irrelevant.
 2 Witnesses are strongly encouraged to enumerate or highlight their agreement or
 3 disagreement with pertinent elements of the Staff Report in order to assist the Planning
 4 Board in identifying the relevant issues in material dispute. Witnesses who share
 5 comparable positions and testimony in favor or support of any Application are also strongly
 6 encouraged to coordinate the presentation of their testimony in order to avoid duplication
 7 and unnecessary delay of the proceedings. The Chairman may require parties with
 8 comparable positions in support or opposition to share and divide available time for the
 9 purpose of presenting testimonial evidence, and the time limits provided according to this
 10 Rule may be modified accordingly. Individuals and organizations who have provided
 11 written testimony or materials for Planning Board consideration are also encouraged to
 12 avoid unnecessary duplication of the record by reading verbatim text as oral testimony; but
 13 rather, to use their oral testimony to highlight important points contained in that text, or
 14 supplement the written testimony with additional information that is relevant to the Planning
 15 Board decision.

16 8.10.5. A question by a member of the Planning Board will be in order at any time during a
 17 public hearing. Members are encouraged to consolidate the questions put to any witness in
 18 a manner that is efficient under the circumstances of each hearing.

19 **8.11. Hearings Convened or Continued By Public Comment In Lieu Of Testimonial Evidence.**

20 8.11.1. Scope and Policy of Rule. The Planning Board may elect to receive written testimony in
 21 addition to, or in lieu of testimonial evidence, for the purpose of convening or continuing a
 22 public hearing unless it considers testimonial evidence essential to afford due process,
 23 develop a complete administrative record, or to provide a reasonable opportunity for each
 24 interested person to be heard. It is the policy of the Planning Board to dispense with taking
 25 testimonial evidence for any hearing (a) only if approval of the Application at issue is non-
 26 controversial in nature and uncontested, (b) if written comments will enhance the ability of
 27 the Planning Board to decide the matter before it fairly and in an expeditious manner, and/or
 28 (c) in any matter where written comments will assist the Planning Board in resolving
 29 technical or legal issues necessary for adopting a resolution of its final action.

30 8.11.2. Manner and Requirements for Electing Rule. Before convening any hearing or
 31 continuing a hearing without taking testimonial evidence, the Planning Staff must prepare
 32 and present to the Planning Board a draft resolution proposed in compliance with Rule [9.4]
 33 supported by an unqualified recommendation of approval or approval subject to certain
 34 conditions as expressed in the resolution and the imposition of which the Applicant does not
 35 contest. The Planning Staff will publish each proposed resolution and recommendation for
 36 approval in advance of consideration by the Planning Board as provided in the Manual.
 37 Based upon a review of the draft resolution proposed by the Planning Staff, a vote of a
 38 majority of the Planning Board quorum in the affirmative to proceed without taking
 39 testimonial evidence is sufficient for that purpose and the hearing may be limited to one or

1 more discrete matters set forth in the proposed resolution that warrant Planning Board
2 consideration. If a vote to convene or re-convene the hearing without testimonial evidence
3 does not carry by a majority of the quorum, a hearing must be convened according to Rule
4 [8.10] on another date and time as appropriate to provide notice according to that Rule. If
5 the vote to convene or re-convene carries, the Chairman will then determine the date by
6 which all written testimony shall be timely received and appoint a date for holding that
7 hearing; provided, that (a) the written testimony must not be required in less than ten (10)
8 days and (b) and the hearing must not be scheduled less than 21 days from the date the
9 Planning Board votes to convene or re-convene a hearing according to this Rule. In
10 connection with any vote taken according to this Rule, a member of the Planning Board may
11 provide oral advice to interested parties for the purpose of identifying those issues described
12 in the draft resolution that warrant special attention or a more detailed response in
13 presenting any written testimony to be considered by the Planning Board, and the hearing
14 may be limited to consideration of those matters.

15 8.11.3. Conduct of Hearing Without Testimonial Evidence. Upon convening or continuing a
16 hearing without testimonial evidence, the Chairman should (a) present a brief explanation of
17 (i) the purpose and scope of the hearing and (ii) the decision by the Planning Board to
18 convene or re-convene without testimonial evidence, and (b) afford each member of the
19 Planning Board an opportunity to disclose for the record any outside communications as
20 required under Rule [20]. In most cases, a hearing where the Planning Board dispenses with
21 testimonial evidence will be conducted based upon the Staff Report and any written
22 testimony presented; provided, that a question of clarification by a member of the Planning
23 Board put to a member of the Planning Staff will be in order at any time.

24 8.11.4. Manner of Planning Board Action. After concluding a hearing convened or re-convened
25 according to this Rule, the Planning Board may take action on the proposed resolution
26 according to Rule [9.1].

27 **8.12. Representation of Organizations.**

28 Any individual who propounds written or oral testimony for consideration by the Planning Board
29 on behalf of a civic association, homeowners association, civic entity or other similar organization
30 must state affirmatively for the record whether the organization has authorized the substance of
31 that testimony. If an individual fails to provide the foregoing affirmation before offering oral
32 testimony, the Chairman may impose the time limit applicable to the testimony of Interested
33 Individuals, rather than the limit otherwise applicable for Authorized Representatives.

34 **8.13. Exhibits.**

35 Each documentary exhibit propounding demonstrative or testimonial evidence to be published
36 before the Planning Board will be marked and identified for the record. Except when it is
37 impossible or for good cause not to do so, no later than seven (7) days before the date of the
38 hearing scheduled for any Application, the Applicant is required to deliver to the Planning Staff
39 each exhibit to be published before the Planning Board during the scheduled hearing. If the
40 Applicant fails to timely provide any exhibit in advance as required according to this Rule, the
41 Chairman may deny publication of that exhibit before the Planning Board or, if that exhibit is
42 essential to the proper consideration of the Application, the Chairman may defer the public
43 hearing on the item for Planning Board consideration at a later time or date. Upon a request by the
44 Applicant or any other party to publish an exhibit before the Planning Board, the Chairman will
45 announce its exhibit number, provide a brief description of the document, consider its
46 admissibility to the proceedings, and affirmatively rule on the record whether that exhibit is

1 accepted for consideration in connection with the hearing. Any exhibit offered for introduction
2 must be surrendered, will not be returned, and becomes the property of the Commission; and those
3 admitted by the Chairman according to this Rule will become part of the administrative record for
4 the pertinent Application.

5 8.13.1. Summary of Correspondence. During the hearing, Planning Staff will present as an
6 exhibit for the record a written summary enumerating each item of correspondence received
7 from interested persons at least two days in advance of the hearing to support, oppose, or
8 approve the Application subject to conditions.

9 8.13.2. Slide Presentation Exhibits. Any Applicant who appears before the Planning Board to
10 present a slide presentation, whether mechanical or computer-based, must furnish to the
11 designated Staff member a complete and exact duplicate of each slide included in such
12 presentation at least seven (7) days in advance of the hearing. The slide presentation will be
13 marked and incorporated in the record as an exhibit. If the Applicant fails to timely provide
14 any slide presentation in advance as required according to this Rule, the Chairman may rule
15 to exclude the exhibit or defer consideration of the Application as provided according to this
16 Rule [8.13].

17 8.13.3. Oversized Documents and Models. Any person who appears before the Planning Board
18 to present a map, diagram or other oversized document as demonstrative evidence must
19 surrender the original or provide a complete duplicate of such document to the designated
20 Staff member in advance of such presentation. Any person who presents an architectural
21 model as demonstrative evidence must provide the designated Staff member with
22 photographs that fairly depict the model. Each oversized document or photograph of a
23 model will be marked and incorporated in the record as an exhibit in accordance with this
24 Rule [8.13]. If the Applicant fails to provide the duplicate of an oversized document or
25 photograph of an architectural model less than seven (7) days in advance of the hearing, the
26 Chairman may rule to exclude the document, model or photographs, as applicable, or defer
27 consideration of the Application as provided according to this Rule [8.13].

28 **8.14. Postponement, Recess and Continuance of Public Hearing.**

29 8.14.1. Postponement. At any reasonable time prior to convening a public hearing and after it
30 is scheduled according to these Rules, the Chairman may postpone it to another date, place
31 and time based upon a showing of reasonable cause for such postponement and, provided,
32 that postponement to another date will comply with any period of limitation for the hearing
33 as prescribed according to the Subdivision Regulations, Zoning Ordinance or these Rules.
34 The reasonable cause for postponement may be advanced by the Chairman, by the request
35 or recommendation of the Planning Staff, or based upon the written request of the Applicant
36 or any other interested party, and subject to the Applicant’s consent if required.

37 8.14.2. Recess and Continuance. At any time after convening a public hearing according to
38 the Rules, the Planning Board may recess or adjourn that hearing and continue it to resume
39 on another date, place and time upon a showing of good cause. The good cause for such
40 recess or adjournment and continuance may be advanced by the Chairman or by
41 acclamation or vote of the Planning Board, by request or recommendation of the Planning
42 Staff, or based upon the written or oral request of the Applicant or any other interested party
43 (subject to the Applicant’s consent if required or appropriate under the circumstances).

44 8.14.3. Public Notice. Unless the date, time and place of the hearing continued in this manner
45 is announced at the public hearing during which the recess, adjournment or continuance is

1 determined, the date, time and place of each hearing so continued will be published and
2 announced according to the public notice requirements of Rule [8.4]; otherwise, an
3 announcement made on the record during the hearing continued in this manner to specify
4 the date, time and place of its continuance is sufficient and does not require any further
5 public announcement or notice thereof.

1 **9. Planning Board Vote, Reconsideration and Resolutions for Applications.**

2 **9.1. Calling the Question of Approval.**

3 By the affirmative vote of a majority of a quorum present to consider any Application, the
4 Planning Board may call the question to approve, approve with conditions, or disapprove that
5 Application.

6 9.1.1. A motion to approve the Application without condition, or subject to the verbatim text of
7 each condition expressed in the Staff Report or draft resolution prepared by the Planning
8 Staff, will be made accordingly.

9 9.1.2. A motion to approve the Application subject to one or more conditions that differ or
10 deviate from the verbatim text expressed in the Staff Report or proposed resolution will
11 specify clearly the manner by which each such difference or deviation is proposed. Each
12 difference or deviation incorporated by such a motion may be severed for individual
13 consideration by the Planning Board. A member of the Planning Board who advances a
14 motion according to this Rule is required, to present the text of each difference or deviation
15 in writing to be published for consideration by the Planning Board.

16 9.1.3. A motion to disapprove the Application must be made in writing to explain the movant’s
17 reasons for making it in reference to specific elements of the Staff Report. The Chairman
18 will allow sufficient latitude for the movant to provide this explanation in reasonable detail.

19 **9.2. Vote and Closing of Record.** Upon a vote of approval, approval subject to conditions, or
20 disapproval by the Planning Board, the record of proceedings held before the Planning Board is
21 closed.

22 **9.3. Reconsideration Pending Issuance of Resolution.**

23 9.3.1. Generally. At any time prior to the issuance of a resolution by the Planning Board
24 according to Rule [10.7] the Planning Board has revisory power to re-open or reconsider the
25 proceedings and to receive further evidence in the event of substantial mistake,
26 inadvertence, irregularity or fraud. A decision to re-open or reconsider may be based on (a)
27 the timely motion made any member of the Planning Board who voted in the majority of the
28 decision that is proposed for reconsideration, (b) the petition of a party of record that
29 complies with Rule [9.3.2], or (c) the written recommendation of the Planning Director.

30 9.3.2. 15-Day Rule. If within fifteen (15) days after a Planning Board vote undertaken in
31 accordance with Rule [9.2], any party of record petitions the Planning Board for
32 reconsideration of the vote, the Planning Board has discretion to re-open the hearing for
33 good cause or to consider new testimony or new evidence that was unavailable at the time
34 of the relevant hearing. Any party who requests reconsideration must serve a copy of its
35 petition on every party of record. The written petition for reconsideration must enumerate
36 and assign clearly the specific errors of fact or law relied upon by the Planning Board, and
37 must contain supporting reasons for seeking the reconsideration based on substantial
38 mistake, inadvertence, irregularity or fraud.

39 9.3.3. Decision to Reconsider. Except when it is impractical based upon the date a written
40 petition to reconsider is received, the Planning Board will consider and vote on that petition
41 during the Planning Board meeting immediately following the date that petition is filed and,

1 in any event, as soon as practicable thereafter. A motion to reconsider is in order only if it is
2 made by a member of the Planning Board who voted in the majority of the decision that is
3 subject to reconsideration, and that motion will carry only if it is supported by a majority of
4 all the members of the Planning Board. A decision to reconsider (a) does not require notice
5 to the public or parties of record in any manner other than by publication on the Planning
6 Board agenda, (b) may be taken without the appearance or testimony of the parties, and (c)
7 is properly before the Planning Board based only on the written petition presented according
8 to this Rule or a motion made according to this Rule without a petition.

9 9.3.4. Effect of Request to Reconsider Pending Decision. A timely petition or motion by a
10 member of the Planning Board to reconsider does not stay or toll the period prescribed for
11 the preparation or adoption of a Planning Board resolution unless and until such time as the
12 Planning Board decides affirmatively to reconsider the Application at issue.

13 9.3.5. Notice of Hearing on Reconsideration. After a decision by the Planning Board to
14 reconsider its decision according to this Rule, the Chairman will promptly thereafter
15 schedule a hearing according to Rule [8.10] or [8.11], and the Office of the Technical
16 Hearing Writers will notify all parties of record of: (a) the Planning Board’s decision to re-
17 hear or reconsider; (b) the date of the hearing; and (c) a reasonable summary of the reasons
18 for the reconsideration based on substantial mistake, inadvertence, irregularity or fraud.
19 Any party of record may file a response to the notice of reconsideration within ten (10) days
20 from the date of receipt of that notice.

21 9.3.6. Hearing on Matters Reconsidered. The Planning Board will conduct a public hearing on
22 the appointed date in accordance with the provisions of Rule [8]; provided, that the scope of
23 matters considered during that hearing must be limited strictly to those set forth in the
24 petition or motion for reconsideration and corresponding notice provided according to Rule
25 [9.3.5].

26 9.3.7. Decision on Reconsideration. At the conclusion of any hearing for reconsideration of any
27 Application, the Chairman will call the question on reconsideration as to the Planning Board
28 approval, approval with conditions, or disapproval of that Application. The vote on
29 reconsideration will comply with the requirements of Rule [9.1], no further reconsideration
30 of the Application is then in order, and the record is then closed according to Rule [9.2].

31 **9.4. Planning Board Resolutions.**

32 The Planning Board must adopt a resolution in writing and according to this Rule to memorialize
33 and evidence its formal action taken on each Application. The Planning Staff will present for
34 Planning Board consideration a proposed resolution for each Application, and each resolution
35 proposed in this manner must enumerate in detail that is legally sufficient the specific findings of
36 fact and conclusions of law required (expressly or by implication) in order to demonstrate
37 compliance with the applicable provisions of:

- a. The Regional District Act;
- b. The Zoning Ordinance;
- c. The Subdivision Regulations; and,

- d. The terms, conditions or requirements imposed in connection with any prior zoning approval by the District Council as applicable to the Subject Property, or any previous Planning Board Action as applicable to the Subject Property.

1 9.5. **Resolutions of Approval.** Any resolution adopted to approve an Application according to this
2 Rule will also conform to the following requirements:

3 9.5.1. General Conditions of Approval. The resolution must specify in appropriate detail the
4 terms, conditions and requirements imposed by the Planning Board with respect to that
5 approval, including, if appropriate under the circumstances and without limitation, the date
6 or event by which the Applicant is required to comply with each such term, condition or
7 requirement.

8 9.5.2. Binding Elements. The resolution must enumerate any term, condition or requirement of
9 approval imposed by the Planning Board and deemed a Binding Element of that approval.

10 9.5.3. Other Data. The resolution must attach and incorporate applicable data, maps, drawings
11 and other information pertinent to the Planning Board approval.

12 **9.6. Resolutions of Disapproval.**

13 Any resolution to evidence a Planning Board decision of disapproval or denial must explain in
14 reasonable detail the legal and factual basis of taking that action.

15 **9.7. Standards and Manner of Adoption of Planning Board Resolutions.**

16 The Planning Board may adopt a proposed resolution only if that resolution, as proposed and
17 taken as a whole, fairly reflects the matters of fact and legal conclusions reached by the Planning
18 Board, whether expressed or adopted by implication, during its public proceedings convened to
19 consider the subject Application. The adoption of a Planning Board resolution does not re-open
20 the record of proceedings, does not require any discussion or debate by the Planning Board on the
21 merits of the Application, and no testimony of the parties is in order for the adoption of a
22 resolution according to these Rules.

1 **10. Planning Board Action By Consent Agenda.**

2 **10.1. Scope of Rule.**

3 The Planning Board may take action without a public hearing by the affirmative vote to adopt any
4 number of items consolidated for consideration into a Consent Agenda in the matters enumerated
5 as follows:

6 a. To approve or approve with conditions any Application for an Amendment to any
7 previous Planning Board Action, except for a resolution to approve an Amendment to a
8 Certified Site Plan if a timely request for a hearing is made (and not withdrawn)
9 according to these Rules ;

10 b. To adopt the written resolution to memorialize its decision rendered according to Rule
11 [9] for approval, approval with conditions or disapproval of any Application, except for
12 a resolution to approve an Amendment to a Certified Site Plan if a timely request for a
13 hearing is made (and not withdrawn) according to these Rules; and,

14 c. To approve and adopt a Record Plat of subdivision according to Section 50-8 of the
15 Subdivision Regulations and Rule [10.8].

16 **10.2. Abstention for Certain Items.** After calling the question of approval for any consent agenda
17 and before the corresponding vote, a member of the Planning Board may abstain for the record
18 from the vote as to any one or more items included among that consent agenda. The member who
19 desires to abstain should assert their abstention on the record and a reason for abstaining from the
20 vote as to that item (including abstention because the member was absent during the public
21 hearing when the Planning Board considered or voted on the item). Any abstention recorded
22 under this Rule does not require severance of the item for separate consideration unless the
23 number of members abstaining results in a vote of less than a majority of all the members of the
24 Planning Board (constitutional majority) to approve that item.

25 **10.3. Prerogative of Severance.** Any item proposed for action by Consent Agenda must be severed
26 and removed from that agenda at the request of any member of the Planning Board. Prior to
27 taking up a motion for approval of any Consent Agenda, the Chairman will entertain the request
28 by any member of the Planning Board to sever any item from consideration in connection with
29 that agenda.

30 **10.4. Hearing on Severed Items.** Any item severed from a Consent Agenda may be considered by the
31 Planning Board individually. In its discretion exercised by acclamation or the affirmative vote of
32 a majority of its members, the Planning Board may immediately convene a hearing in accordance
33 with Rule [8] as necessary to properly consider and dispose of the item severed from the Consent
34 Agenda; provided, that it remains in the Chairman’s discretion to order or abbreviate those
35 proceedings if appropriate under the circumstances. Any hearing convened to consider an item
36 severed from a Consent Agenda may be recessed and continued in accordance with Rule [8.10] or
37 [8.11], as appropriate, in the Chairman’s discretion.

38 **10.5. Action on Severed Items.** Upon concluding the hearing convened to consider any item severed
39 from a Consent Agenda, if any is convened according to this Rule, the Planning Board may
40 approve, approve with conditions, or disapprove such item in accordance a vote taken according
41 to Rule [9].

1 **10.6. Consent Agenda for Amendments.**

2 The Planning Director will present for consideration by the Planning Board a Consent Agenda for
3 Amendments consisting only of a number of Applications for Amendment; provided that the
4 Consent Agenda for Amendments must not, in any event, include consideration of any Application
5 for any Amendment to a Certified Site Plan if a timely request for a public hearing is made (and
6 not withdrawn) according to these Rules with respect to that Amendment.

7 10.6.1. In General. Any Application for Amendment included on the Consent Agenda for
8 Amendments should be non-controversial in nature, uncontested, and must be accompanied
9 for presentation by a Staff Report, together with a proposed Planning Board resolution
10 prepared according to Rule [9] setting forth the unqualified recommendation of approval or
11 approval subject to certain conditions the imposition of which the Applicant does not
12 contest. There will be no public testimony and no debate or discussion by any member of
13 the Planning Board regarding any item on the Consent Agenda for Amendments, provided,
14 that a question of simple clarification by any member of the Planning Board will be in order
15 for response by the Planning Staff.

16 10.6.2. Public Notice of Consent Items. Not less than ten (10) days prior to the public meeting
17 during which the Planning Board considers any Consent Agenda for Amendments, the
18 Planning Staff will provide written notice of the date scheduled for such consideration of
19 each Amendment. The Planning Staff will provide the written notice required for this
20 purpose by website or other publication readily available to the public and, in addition, by
21 regular mail addressed to the last known address of the Applicant.

22 10.6.3. Manner of Planning Board Action on Consent Items. The Planning Board may act to
23 approve, and thereby adopt the recommendations for approval of the Planning Staff, any
24 number of Applications for Amendment incorporated within each Consent Agenda for
25 Amendments. The action will be taken upon a single motion for approval of those items
26 supported by a vote in the affirmative by a majority of all the members of the Planning
27 Board, and that vote constitutes the approval and adoption of each Amendment included
28 exactly as if it had been acted upon individually.

29 10.6.4. Action on Severed Items. If any item is severed from the Consent Agenda for
30 Amendments, a motion to approve, table or re-refer to Staff any item severed will then be in
31 order and carried by the affirmative vote of a majority of a quorum of the Planning Board.

32 **10.7. Consent Agenda for Planning Board Resolutions.**

33 The Planning Staff will prepare and present for consideration by the Planning Board a Consent
34 Agenda for Resolutions consisting only of a number of proposed resolutions which conform to
35 the requirements of this Rule.

36 10.7.1. Preparation of Draft Resolutions. The Planning Staff will prepare each resolution in
37 accordance with the Manual to be considered by the Planning Board for adoption after the
38 period for reconsideration expires without any request for reconsideration or, if any request
39 for reconsideration is made, after the Planning Board disposes of any such request.
40 Provided, that a timely request to reconsider does not stay or toll the period prescribed
41 according to this Rule.

42 10.7.2. Public Notice of Consent Items. Upon completion by the Planning Staff of each
43 resolution proposed for adoption by the Planning Board, the Planning Director will arrange

1 for its publication and dissemination according to the requirements of the Manual no later
2 than ten (10) days prior to the Planning Board meeting during which that resolution is
3 scheduled for consideration or adoption by the consent agenda.

4 10.7.3. Exceptions. Not later than five (5) days after the proposed resolution is published for
5 public review according to Rule [10.7.2], the Applicant must deliver to the Planning
6 Director a written notice of any exceptions taken with respect to the resolution as proposed.
7 The Planning Director will arrange for publication of any exceptions registered according to
8 this Rule as required under the Manual. A notice of exception provided according to this
9 Rule must clearly identify any objection or exception taken with respect to the resolution as
10 proposed, and the Applicant must support each objection or exception by legal argument or
11 other evidence of record to demonstrate how the proposed resolution does not fairly reflect
12 the decision of the Planning Board taken during the public hearing held to consider the
13 subject Application. Consideration of exceptions taken according to this Rule does not re-
14 open the record of proceedings, does not require any discussion or debate by the Planning
15 Board on the merits of the Application, and no testimony of the parties is in order for
16 consideration of the exceptions or adoption of a resolution notwithstanding those exceptions
17 taken.

18 10.7.4. Staff Evaluation of Exceptions. The Planning Staff must evaluate any exceptions noted
19 on a timely basis with respect to a proposed resolution. If the Planning Staff concurs with
20 the exception as noted, the proposed resolution will be revised accordingly and presented in
21 appropriate detail for consideration by the Planning Board. If the Planning Staff determines
22 that additional time is necessary to evaluate any exception noted according to this Rule, the
23 Planning Director must arrange to defer consideration of the resolution by the Planning
24 Board until such time as that evaluation is completed. If the Planning Staff does not concur
25 in any exception noted on a timely basis, the resolution must not be included or considered
26 on a Planning Board consent agenda, and shall be severed and considered separately
27 together with the exceptions as noted. The Planning Staff may consult with the Applicant
28 and parties of record as appropriate to evaluate the exceptions noted.

29 10.7.5. Proceedings In General. The Planning Board will consider each Consent Agenda for
30 Resolutions after each item has been published according to the requirements of this Rule.
31 There will be no public testimony and no debate or discussion regarding any item on the
32 Consent Agenda for Resolutions, provided, that a question of simple clarification by any
33 member of the Planning Board will be in order for response by the Planning Staff. The
34 Planning Staff will present to the Planning Board the complete text of each resolution and
35 will incorporate by inter-lineation any exception taken in which they concur, together with
36 exhibits for each item. If the Planning Staff does not concur in any exception that is taken
37 timely, the resolution pertaining to that item is deemed severed for the purpose of action by
38 the Planning Board according to these Rules.

39 10.7.6. Manner of Planning Board Action on Consent Items. The Planning Board may act to
40 approve, and thereby adopt any number of the resolutions proposed by the Planning Staff
41 and incorporated within each Consent Agenda for Resolutions. The action will be taken
42 upon a single motion for approval supported by a vote in the affirmative by a majority of the
43 members of the Planning Board who participated in the underlying vote for each item
44 included among the Consent Agenda for Resolutions. The vote to adopt a motion to
45 approve the Consent Agenda constitutes the approval and adoption of each Resolution
46 included exactly as if it had been acted upon individually. If the vote does not carry, each
47 item included among the Consent Agenda for Resolutions is deemed severed and must be
48 considered separately as required otherwise under these Rules.

1 10.7.7. Action on Severed Items. If any item is severed from the Consent Agenda for
2 Resolutions, a motion to approve, approve subject to certain modifications presented in
3 writing, or to table and re-refer to Staff any item severed will then be in order and carried by
4 the affirmative vote of a majority of the members of the Planning Board in attendance at
5 that time and who participated in the underlying vote for that item.

6 **10.8. Consent Agenda for Record Plats.**

7 The Planning Director will present for consideration by the Planning Board a Consent Agenda for
8 Record Plats consisting only of a number of Applications for approval of Record Plats.

9 10.8.1. In General. Any Application for approval of a Record Plat must be accompanied by a
10 Certificate of Compliance made by the Applicant, together with a brief Staff Report to (a)
11 confirm that the Planning Staff has reviewed the Application for Record Plat according to
12 the requirements of the Manual and (b) express an unqualified recommendation of the
13 Planning Staff for Planning Board approval of that Final Plat. There will be no public
14 testimony and no debate or discussion by any member of the Planning Board regarding any
15 item on the Consent Agenda for Record Plats, provided, that a question of simple
16 clarification by any member of the Planning Board will be in order for response by the
17 Planning Staff.

18 10.8.2. Manner of Planning Board Action on Consent Items. The Planning Board may act to
19 approve, and thereby adopt the recommendations for approval of the Planning Staff, any
20 number of Applications for Record Plats incorporated within each Consent Agenda for
21 Record Plats. The action will be taken upon a single motion for approval of those items
22 supported by a vote in the affirmative by a majority of all the members of the Planning
23 Board, and that vote constitutes the approval and adoption of each Record Plat included
24 exactly as if it had been acted upon individually.

25 10.8.3. Action on Severed Items. If any item is severed from the Consent Agenda for Record
26 Plats, a motion to approve, table or re-refer to the Planning Staff any item severed will then
27 be in order and carried by the affirmative vote of a majority of the members of the Planning
28 Board in attendance at that time

1 **11. Final Action.**

2 11.1. The adoption of a resolution by Consent Agenda in accordance with these Rules: (a) is deemed
3 effective upon its mailing to the Applicant and each party of record, (b) constitutes the final
4 action of the Planning Board with respect to each Application, and (c) begins any period of
5 appeal, repose or limitation applicable under law or in equity to the Planning Board Action taken.

6 11.2. The adoption of a Record Plat by Consent Agenda in accordance with these Rules: (a) is deemed
7 effective on the date it is signed by the Chairman, (b) constitutes the final action of the Planning
8 Board with respect to each Application for approval of a Record Plat, and (c) begins any period
9 of appeal, repose or limitation applicable under law or in equity to the Planning Board Action
10 taken with respect to that Record Plat.

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CHAPTER VI
CERTIFIED SITE PLANS

12. Preparation, Notice and Approval of a Certified Site Plan.

[Reserved.]

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CHAPTER VII
ENFORCEMENT OF PLANNING BOARD ACTIONS

13. Initiating Enforcement Actions.

[Reserved.]

1 **14. Preliminary Matters in Enforcement Actions.**

2 [Reserved.]

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CHAPTER VIII
RULES OF PROCEDURE FOR HEARINGS
IN ENFORCEMENT ACTIONS

15. General Rules for Hearings In Enforcement Actions.

[Reserved.]

1 **16. Special Rules for Planning Board Hearings in Enforcement Actions.**

2 [Reserved.]

1 **17. Special Rules for Proceedings Before A Hearing Officer in Enforcement Actions.**

2 [Reserved.]

1 **18. Planning Board Decision in Enforcement Action.**

2 [Reserved.]

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CHAPTER IX
CIVIL FINES AND PENALTIES
IN ENFORCEMENT ACTIONS

19. Schedule of Civil Fines and Penalties for Violations.

[Reserved].

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CHAPTER X
EX PARTE COMMUNICATIONS OF THE PLANNING BOARD

20. Outside Communications.

20.1. Policy.

To preserve public confidence in the fairness of Planning Board deliberations and decisions, the Planning Board should ensure that the public and interested parties have the opportunity to know, and respond to, all information the Planning Board considers in making its decisions. The Planning Board should also ensure that all members have the same opportunity to know and consider any relevant evidence provided to any of the other Planning Board members; provided, that the Planning Board may take administrative notice of matters in common knowledge, or matters falling within the experience and expertise as disclosed by any member in reaching a decision on a case.

20.2. Planning Board’s Obligation to Avoid.

When considering any of the matters decided according to these Rules, the Planning Board deals with parties who are directly affected by its decision (such as the Applicant and neighbors of the proposed subdivision or variance site). Each of these interested parties needs the assurance that other interested parties will not have unfair advantage in presenting their version of the relevant facts or concerns to the Planning Board. In such cases, therefore, Planning Board members must avoid communicating with Applicants or other interested parties about any pending Application except at the Planning Board meetings at which the Application is being considered. The Planning Director will regularly publish and provide each member of the Planning Board with a roster of pending Applications completed in appropriate detail to effectuate the purpose of this Rule.

20.3. Prohibitions.

Applicants, their employees, attorneys and other agents are strictly prohibited from communicating with any member of the Planning Board about any pending Application except during the Planning Board meetings at which the Application is being considered. In the event the Planning Board determines that an Applicant has intentionally communicated or attempted to communicate with a member of the Planning Board in violation of this Rule, the remedy for such communication may be deferral of the Planning Board Action concerning that Application for a period of up to six months.

20.4. Disclosure of Unsolicited Communications.

If a Planning Board member receives unsolicited communications about such a proposal outside of a Planning Board meeting, the member has the duty to reveal the communications during the Board's consideration of the proposal. This ensures that the communicated information will become part of the record and that other members of the Planning Board and interested parties will have an opportunity to consider and refute the information.

20.5. Scope of Rule.

Nothing provided in this Rule applies to any member of the Planning Staff. Subject only to the applicable provisions of the Maryland Open Meetings Act, nothing provided in this Rule applies

1 to, or otherwise prohibits or constrains, any member of the Planning Board from communicating
2 with (a) other members, (b) the Planning Staff or (c) legal counsel for the purpose of obtaining
3 information, seeking legal counsel or any other lawful deliberative advice. This Rule also does
4 not apply or prohibit any member of the Planning Board from communicating with third parties in
5 connection with any quasi-legislative, or other matter or proceeding that does not pertain to an
6 Application or alleged Violation covered according to these Rules.

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CHAPTER XI
MISCELLANEOUS REGULATIONS

21. **Time.** In computing any period of time prescribed by these Rules, the day upon which that period of time begins to run is not included, and if the period would otherwise expire on a day that is not a Business Day, the period is automatically extended so as to expire on the next day that is a Business Day.
22. **Disclaimer of Maryland APA.** Any hearing conducted by the Planning Board according to these Rules is not an “agency hearing” within the meaning of the contested case provisions of the Maryland Administrative Procedures Act, Maryland Annotated Code, State Government Article, Sections 10-201 et seq., and the provisions of that Act do not apply
23. **Parliamentary Rules.** Parliamentary procedure in a meeting of the Planning Board is informal. However if required to keep order, the Chairman may invoke and apply Roberts Rules of Order to resolve any parliamentary matter not specifically covered by these Rules.
24. **Severability.** If any provisions of these Rules (or the application of any Rule to any person or circumstance) is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of these Rules (or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable) are not affected by that holding, but are presumptively valid and enforceable to the fullest extent permitted by law.