



Agenda Date: January 25, 2007

Item No.: 7

MEMORANDUM

TO: The Montgomery County Planning Board

VIA: Debra Yerg Daniel, Associate General Counsel *DYD, DAC*
(301) 495-4646

FROM: David B. Lieb, Associate General Counsel *DBL*
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DATE: January 22, 2007

RE: Draft Rules of Procedure

The Board is scheduled to adopt the revised Rules of Procedure at its January 25, 2007 meeting. This memorandum proposes certain additional changes to the draft Rules, and discusses the process for the Rules' adoption.

Proposed Changes. At its November 30, 2006 meeting, the Board held a work session on the draft Rules of Procedure. Following the November 30, 2006 work session, a revised version of the draft Rules incorporating changes discussed by the Board was posted on the Board's website for public comment, with a December 15, 2006 deadline for the receipt of any final public comments.

Based upon the public comments received, and further review of the draft Rules, Legal Staff proposes the following changes, which are highlighted in the attached draft Rules (Attachment 1):

- **Chapter I.** Amend the title of Chapter I from "Authority, Purpose, and Scope of Rulemaking" to "Authority, Purpose, and Scope" to more accurately describe the Chapter.

- **Section 1.3.** Make the Rules effective beginning January 26, 2007, regardless of when the Application was filed or Violation was alleged. This change will avoid confusion about whether the new or former Rules need to be applied in a particular case, and, because the Rules apply to the conduct of hearings only, should not cause any problems with retroactive application.
- **Section 2.2.21.** Include in the definition of Violation references to Chapters 19 and 22A of the Montgomery County Code to encompass violations of water quality and forest conservation plans.
- **Section 3.4.2.** Clarify the Planning Board's obligation to avoid ex parte contacts to prohibit communications with "Persons," as defined in the Rules, instead of "parties," which is not defined in the Rules.¹
- **Section 3.4.3.** Expand the prohibition on ex parte communications to apply to alleged Violations (in addition to Applications), and to expand the Board's authority to impose penalties for ex parte communications to include "an appropriate remedy," instead of limiting penalties to deferral of Planning Board action or exclusion of testimony from the offending Person.
- **Section 4.3.** Exclude Project Plans, which are required to be noticed pursuant to the Project-Plan-specific notice provisions of the Zoning Ordinance, from the 10-day notice requirement for hearings.²
- **Section 4.4.** Exclude Project Plans, for which Section 59-D-2.3 of the Zoning Ordinance requires the Staff Report to be posted 15 days prior to the hearing, from the 10-day requirement applicable to all other Staff Reports, and add a 15-day posting requirement for Project Plans.

¹ "Party of Record" is defined in the Rules, but "party" is not. Under the current rules of procedure, the Board is prohibited from having ex parte communications with any party, not just parties of record.

² Under Section 59-D-2.3 of the Zoning Ordinance, "[n]ot later than 15 days after the filing of an optional method of development application, the applicant shall send written notice by registered mail of the date upon which the public hearing required herein has been set...."

- **Section 4.7 and 4.7.3.** Reorganize sections 4.7 and 4.7.3: These sections will read more clearly if certain general language concerning establishment of time limits for hearings is moved from Section 4.7.3 to Section 4.7. Legal Staff also proposes to clarify Section 4.7.3 to provide that any Person who wishes to have longer to present their testimony than provided in the guidelines under Section 4.7.2 should request additional time through the Chairman's Office as soon as possible.

Process. Subject to any additional changes agreed to by the Board at its January 25 meeting, the Board should vote to adopt the draft Rules by Resolution. The need to adopt the Rules via resolution arises under the Project Plan provisions of the Zoning Ordinance, which provide that public hearings with respect to Project Plans are to be conducted "under such rules as the planning board shall, from time to time, establish by resolution and publish." Section 59-D-2.3 (emphasis added). A draft Resolution, which, subject to the Board's approval, will memorialize the Board's adoption of the Rules of Procedure, is provided as Attachment 2 to this memorandum.

Following final adoption, the Rules will be submitted to the Montgomery County Council for adoption pursuant to "Method 2" of the Council's procedures for adoption of regulations, as required by Section 59-D-3.9 of the Zoning Ordinance.³

Please do not hesitate to contact us if you have any questions.

³ Method 2 is described in Section 2A-15(f)(3) of the Montgomery County Code.

ATTACHMENT 1

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. These rules supplant any and all other rules for conduct of hearings previously adopted by the Planning Board.
- 1.2. The purpose of these Rules is to establish a reasonable and consistent process for the Planning Board 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 intended to ensure fair and impartial treatment of each Applicant, Respondent, or Person who is interested in or may be aggrieved by the action; promote the orderly and efficient conduct of public proceedings convened to decide such matters; and comply with applicable federal, state, and local laws.
- 1.3. These Rules apply, effective January 26, 2007, to decisions made by the Planning Board's conduct of hearings with respect to (a) any Application for Project Plan, Preliminary Plan of Subdivision, Site Plan, Record Plat, Special Building Permit, Forest Conservation Plan, Water Quality Plan, or any Amendment thereto, ~~filed or accepted for filing on or after November 15, 2006;~~ and (b) any matter of alleged Violation (as defined herein) ~~on or after November 15, 2006.~~ The Rules will guide the Planning Board's conduct of all other hearings matters, as appropriate.

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CHAPTER II
DEFINITIONS

2. Definitions.

2.1. Applicability.

For purposes of these Rules the following definitions apply.

2.2. Other Definitions.

- 2.2.1. "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 a person who files an Application pursuant to Chapter 50 or 59 of the Montgomery County Code.
- 2.2.4. "Application" means a written request filed with the Commission by or on behalf of an Applicant seeking Planning Board approval of any of the following:
 - (a) A "Project Plan" for approval of proposed development under Section 59-D-2.12 of the Zoning Ordinance;

- (b) A "Preliminary Plan" (of Subdivision or Re-subdivision) for approval of proposed development under to Section 50-34 of the Subdivision Regulations;
- (c) A "Pre-Preliminary Plan" for approval of a proposed development under Section 50-33A of the Subdivision Regulations;
- (d) A "Record Plat" for a proposed development under Section 50-8 of the Subdivision Regulations;
- (e) A "Special Building Permit" for a proposed development under the requirements for issuance of a permit according to Article IV, Chapter 8, of the Montgomery County Code based upon the favorable determination by the Planning Board concerning adequate public facilities.
- (f) A "Forest Conservation Plan" under Chapter 22A of the Montgomery County Code.
- (g) A "Water Quality Plan" under Chapter 19 of the Montgomery County Code.
- (h) An Amendment to any of the above.

2.2.5. "Business Day" means a weekday that is not a Commission holiday.

2.2.6. "Chairman" means the chairman of the Planning Board appointed according to Section 7-111 of the Regional District Act or another member of the Planning Board presiding in that capacity according to these Rules.

2.2.7. "Consent Agenda" means one or more of a limited set of proposed Planning Board Actions, including (a) approval of certain Amendments, (b) adoption of Planning Board resolutions, or (c) approval of Record Plats, compiled and presented together for consideration and approval by a single vote according to these Rules.

2.2.8. "Day" means a calendar day.

2.2.9. "District Council" means the County Council of Montgomery County, Maryland, sitting in its capacity as the District Council for that portion of the regional district lying within Montgomery County, Maryland, according to Section 8-101(a) of the Regional District Act.

2.2.10. "Hearing Officer" means the administrative tribunal appointed and authorized by the Planning Board to conduct certain hearings on an alleged Violation.

2.2.11. "Party of Record" means an Applicant, Respondent, or other person, who, by presenting written or oral testimony, comment, or argument, has appeared before the Planning Board in a proceeding governed by these Rules.

2.2.12. "Person" means an individual, partnership, corporation, association, joint stock company, public trust, an organized group of persons, whether incorporated or not, a receiver or trustee of the foregoing, a municipality, including a city, county, or any other political subdivision of a State, a State, the District of Columbia, any territory of the United States or any agency of any of the foregoing, any agency, authority, or instrumentality of the United States, or any corporation which is owned directly or indirectly by the United States, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty. The term also includes a foreign government or any agency, authority, or instrumentality thereof.

- 2.2.13. "Planning Board" means the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission acting in that capacity as provided generally under Section 7-111 of the Regional District Act.
- 2.2.14. "Planning Board Action" means the approval by the Planning Board, with or without conditions, or disapproval, of any Application, or the imposition by the Planning Board of a Plan of Compliance or Corrective Order based on a determination of Violation made according to these Rules.
- 2.2.15. "Planning Staff" means those employees of the Commission who are assigned to process, review, report, or make recommendations of any sort to the Planning Board or Planning Director regarding the approval or disapproval of any Application, County permit required for development, or an alleged Violation.
- 2.2.16. "Regional District Act" means 1927 Maryland Laws Chapter 448, codified as a public general law under Article 28 of the Annotated Code of Maryland, as amended from time to time.
- 2.2.17. "Respondent" means the person, or the attorney or agent of any such person, charged by actual or constructive notice with legal responsibility for any alleged Violation.
- 2.2.18. "Site Plan Application" means an Application for approval of a Site Plan required according to Section 59-D-3 of the Zoning Ordinance or required by condition imposed under the approval of a Project Plan or Preliminary Plan.
- 2.2.19. "Subdivision Regulations" means those regulations of subdivision applicable in Montgomery County and codified under Chapter 50 of the Montgomery County Code, as amended from time to time, pursuant to the authority of the Regional District Act.
- 2.2.20. "Subject Property" means all or part of an assemblage of property that is the subject of an Application for approval by Planning Board Action as provided under these Rules.
- 2.2.21. "Violation" means an unauthorized or unlawful deviation from any term, condition, limitation or requirement of any Planning Board Action that is actionable under Section 7-116(h) of the Regional District Act, Section 50-41 of the Subdivision Regulations, or Sections 59-A-1.3 or Section 59-D-3 of the Zoning Ordinance, or Chapter 19 or 22A of the Montgomery County Code.
- 2.2.22. "Zoning Ordinance" means the Zoning Ordinance codified under Chapter 59 of the Montgomery County Code, as adopted and amended from time to time, by the Montgomery County District Council pursuant to the authority set forth under the Regional District Act.

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CHAPTER III
CONFLICTS OF INTEREST AND EX PARTE COMMUNICATIONS

3. Public Ethics Policy.

In order to promote confidence and trust in the conduct of public business, members of the Planning Board and Commission staff must, at all times and in all respects, observe an affirmative obligation to disclose any actual, apparent or potential conflict of interest pertaining to any Application or alleged Violation that is subject to the jurisdiction of the Planning Board.

3.2. Planning Board.

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

3.3. Planning Staff.

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

3.4. Outside Communications.

3.4.1 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 non-privileged information that 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. The Planning Board's ex parte rules do not apply to non-regulatory matters.

3.4.2 Planning Board's Obligation to Avoid.

When considering any of the matters decided according to these Rules, the Planning Board deals with ~~parties~~ Persons 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~~ Persons 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 any other ~~parties~~ Persons about a pending Application except at the Planning Board meetings at which the Application is 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.

3.4.3 Prohibitions.

Planning Board Members are strictly prohibited from communicating with any Person other than Planning Staff or another Board Member about the merits of any pending Application or alleged Violation except during the Planning Board meetings at which the Application or alleged Violation is being considered. In the event the Planning Board determines that any Person 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 the~~ Planning Board may impose an appropriate remedy, including, without limitation, deferral of the Planning Board Action concerning that Application for a period of up to six months or exclusion of any testimony by the Person from the record of the matter to which the prohibited communication pertained.

3.4.4 Disclosure of Unsolicited Communications.

If a Planning Board member receives unsolicited communications about a pending Application or alleged Violation outside of a Planning Board meeting, the member has the duty to disclose and describe the communications during the public hearing for the Board's consideration of the proposal.

3.4.5 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 to, or otherwise prohibits or constrains, any member of the Planning Board from communicating with other members, Planning Staff, or legal counsel for the purpose of obtaining information or advice. This Rule also does not apply to or prohibit any member of the Planning Board from communicating with third parties in connection with any matter other than an Application or alleged Violation covered by these Rules.

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CHAPTER IV
RULES OF PROCEDURE FOR PUBLIC HEARINGS
ON DEVELOPMENT APPLICATIONS

4. Policy and Nature of Public Hearings before the Planning Board.

The Planning Board seeks to conduct public hearings in a fair and efficient manner that permits a thorough exploration of the issues of fact and law to be decided. Notice of hearings will be provided to Applicants and the public in order for them to review and prepare comments on staff reports and Applications. The decisions of the Planning Board on Applications will be based on applicable legal standards and the evidence and argument submitted into the record of the hearing, whether in written, oral, or exhibit form. The Board may also rely on the knowledge, experience, and observations of its members, and matters of common knowledge.

4.1 Public Hearings before the Planning Board.

The Planning Board will hold a public hearing to receive testimony for any matter governed by these Rules, with the exception of matters placed on the Consent Agenda pursuant to Rule [4.13]. The Board welcomes testimony from the public and interested parties at its hearings. Where parties or the public wish to bring to the Board's attention complex data, reports, or arguments, it will be helpful to the Board's consideration of this material if it is submitted in writing in advance of the hearing. The Board may limit the time allotted for oral testimony. The Board may leave the record open to receive written testimony. Persons offering oral testimony are requested to summarize major points that are more fully discussed in written testimony and to refrain from repetitious oral testimony so that each interested Person has an opportunity to be heard. As the hearings conducted under these rules are quasi-judicial in character, those presenting testimony are advised to observe general rules of decorum and address only the issues before the Board.

4.2 Presiding Officer.

The Chairman is the presiding officer at any public hearing held by the Planning Board and has broad discretion to conduct hearings in any manner that permits the development of a complete administrative record and provides a reasonable opportunity for interested parties to be heard. In the event the Chairman is absent for any reason, the Vice-Chairman or another member of the Board will preside.

4.3 Notice of Public Hearings.

Except for Project Plans, the notice for which is governed by Section 59-D-2.22 of the Zoning Ordinance, Not not less than ten (10) days prior to the public hearing on an Application, the Planning Staff will provide written notice to the Applicant, and post notice on the Planning Board web site, of the hearing date, time, and location. The web posting will include information on where and how persons may examine the Application file.

4.4 Scheduling Subject to Staff Report.

Except for Project Plans or in exceptional circumstances as determined by the Chairman or the Board, the public hearing on an Application will be scheduled not less than ten (10) days after the date on which the staff report is published on the Planning Board's web site. The date, time, and location of each hearing will be established at the discretion of the Chairman. For Project Plans, the public hearing on an Application will be scheduled not less than fifteen (15) days after the date on which the staff report is published on the Planning Board's web site.

4.5 Rules of Evidence.

The Board will accept evidence with the goal of developing a full record that will assist the Board in its deliberations. Public hearings conducted by the Planning Board under these Rules will not conform strictly to the rules of evidence or procedure applicable to judicial proceedings. The Board may consider relevant evidence, which, based on its experience and expertise, possess probative value and assists in its reaching a decision on a case. Hearsay evidence, if relevant, will normally be accepted into the record. The Chairman may exclude from evidence any irrelevant, immaterial, or unduly repetitious material. The Chairman will rule on any objections to the admission of any evidence proffered.

4.6 Requests to Present Rebuttal Testimony and Cross-Examine Witnesses.

In order to promote an open public exchange and a collaborative environment in public hearings conducted under these Rules, the Chairman may grant the request of an Applicant or any Person representing an organization, association, group, or Person offering testimony to offer rebuttal testimony. Rebuttal testimony shall be brief, and be intended to refute testimony placed on the record by others.

Requests for cross-examination may be granted if, in the Chairman's judgment, the matter proposed for cross-examination cannot reasonably be addressed through rebuttal testimony, or if the denial of a request to cross-examine a witness would cause undue prejudice under the circumstances. In the event a request to cross-examine is granted, the questions on cross-examination must (a) be brief, (b) pertain only to the witness's testimony (c) be interrogatory in nature (and not argumentative), and (d) not be preceded by statements, nor may they contain allusions to personality or motives. The Chairman may sustain objections to or strike any question as out of order or objectionable.

4.7 Guidelines for Hearings with Testimonial Evidence.

The Chairman may establish time limits for each portion of a public hearing, including limits on the time permitted for presentations by individual speakers and/or total time permitted for acceptance of oral testimony, and deadlines for the filing of written or documentary evidence. The time limits imposed shall take into account the total amount of time available to conduct the hearing, the number persons who request to be heard, and the overall breadth and complexity of the matters to be considered by the Planning Board. The Chairman will announce any time limits imposed as soon as possible, but no later than when the hearing is convened. In any hearing convened where the Planning Board receives testimonial evidence the order of proceedings shall be as follows:

4.7.1 Upon convening each hearing, the Chairman shall present a brief explanation of the purpose of the hearing, and afford each member of the Planning Board an opportunity to disclose for the record (in reasonable detail) the substance any outside communication.

4.7.2 In most cases, the following sequence of presentations will be followed. The time limits are guidelines only and may be increased or decreased based on the character of the case.

Guidelines for Sequence of Public Hearing

**Time Limit
(minutes)**

- | | | |
|----|---|----|
| a. | Presentation of the Staff Report | 10 |
| | <ul style="list-style-type: none"> • Description of Project • Enumeration of Regulatory Standards • Summary of the Staff Analysis and Recommendation | |
| b. | Testimony of the Applicant | 15 |
| | <ul style="list-style-type: none"> • Enumeration of Exceptions Taken to Staff Report (Required) | |
| c. | Testimony of Government Officials | 7 |
| d. | Testimony of Authorized Representatives: | 10 |
| | <ul style="list-style-type: none"> • Civic Associations • Homeowners Associations • Recognized Civic Entities • Other organized parties | |
| e. | Testimony of Adjoining or Abutting Property Owners (if not represented by d. above) | 5 |
| f. | Testimony of Interested Individuals | 3 |
| g. | Rebuttal testimony may be allowed as appropriate or reserved | - |

4.7.3 ~~The Chairman may establish time limits for each portion of a public hearing, including limits on the time permitted for presentations by individual speakers and/or total time permitted for acceptance of oral testimony, and deadlines for the filing of written or documentary evidence. The time limits imposed shall take into account the total amount of time available to conduct the hearing, the number persons who request to be heard, and the overall breadth and complexity of the matters to be considered by the Planning Board. The Applicant and any authorized representative of a civic association, homeowners association, recognized civic entity, or other organized group (including a group of individuals who wish to present testimony through a single spokesperson) In order to request additional time to present testimony at a hearing, Persons should notify the Chairman's office as soon as possible of their plan to testify at the hearing, and how much time they would like to present their testimony at the hearing. The Chairman will announce any time limits imposed as soon as possible, but no later than when the hearing is convened.~~

4.7.4 Duplicative Testimony. The Chairman may require parties with comparable positions in support or opposition to share and divide available time for the purpose of presenting testimony, and the time limits provided according to this Rule may be modified accordingly. Individuals and organizations that have provided written testimony or materials for Planning Board consideration are also encouraged to avoid unnecessary

duplication of the record by reading verbatim text as oral testimony; but rather, to use their oral testimony to highlight important points contained in that text, or supplement the written testimony with additional information that is relevant to the Planning Board decision.

- 4.7.5 Planning Board Questions. A question by a member of the Planning Board will be in order at any time during a public hearing. Board members are encouraged to consolidate the questions put to any witness in a manner that is efficient under the circumstances of each hearing.

4.8 Representation of Organizations.

Any individual who presents written or oral testimony for consideration by the Planning Board on behalf of a civic association, homeowners association, civic entity, or other organization must state for the record at the outset of their presentation whether the organization has authorized the substance of that testimony. If an individual fails to provide the foregoing affirmation before offering oral testimony, the Chairman may impose the time limit applicable to the testimony of Interested Individuals, rather than the limit otherwise applicable for Authorized Representatives.

4.9 Exhibits.

Any exhibit, model, or demonstrative evidence presented by Planning Staff, the Applicant, or any other person as an element of its oral or written testimony before the Planning Board, will be assigned an exhibit number, marked and identified for the record, and the person presenting the exhibit shall provide a brief description of it. The Chairman will rule on the admissibility of exhibits into the record. Any exhibit offered for introduction, will become part of the administrative record for the pertinent Application. The exhibit, a duplicate, or accurate representation of it, must be provided at the time of its admission into the record. Exhibits entered into the record become the property of the Commission and will not be returned. Persons who expect to present exhibits or other demonstrative evidence are encouraged to advise Planning Staff prior to the hearing so that appropriate arrangements can be made for its presentation.

4.10 Postponement, Recess, and Continuance of Public Hearing.

- 4.10.1 Postponement. Any member of the Planning Board, Planning Staff, or any Party of Record may request that a scheduled public hearing be postponed. The decision to postpone a scheduled public hearing shall be made at the Chairman's discretion.
- 4.10.2 Recess and Continuance. At any time after convening a public hearing the Planning Board may recess or adjourn that hearing and continue it to be resumed on another date, place, and time. A motion for continuance may be made by any member of the Planning Board on the member's own initiative or upon request or recommendation of the Planning Staff, the request of the Applicant, or of any other interested Person (subject to the Applicant's consent, if required). A motion to recess or adjourn the hearing and continue it at another time must be approved by a vote of a majority of the members of the Board present and voting. If the date, time, and place of a continued hearing is announced on the record, no further notice shall be required.
- 4.10.3 Public Notice of a Continued Hearing. If the date, time and place of the continued hearing is not announced during the public hearing that is to be continued, the date, time and place of the rescheduled hearing will be published and announced as soon as practicable on the web site of the Planning Board, and mailed to all Parties.

4.11 Planning Board Vote and Resolutions

- 4.11.1 Board Decisions. The Planning Board may approve, with or without conditions, or disapprove an Application or make a finding with respect to an alleged Violation, on the motion by any Planning Board member. Any motion for approval of an Application subject to conditions shall specify the conditions to which the approval is subject.
- 4.11.2 Vote and Closing of Record. Upon a vote of approval, approval subject to conditions, or disapproval by the Planning Board, the record of proceedings held before the Planning Board shall be closed.
- 4.11.3 Planning Board Resolutions. The Planning Board shall adopt a Resolution in writing to memorialize any Planning Board Action. The Planning Board Action shall be final for purposes of reconsideration and appeal on the date of mailing. The adoption of a Resolution does not re-open the record of proceedings, nor does it require any discussion or debate by the Planning Board on the merits of the Application. No testimony of the parties is in order for the adoption of a Resolution. The Planning Board is not required to adopt Resolutions in non-regulatory matters.
- 4.11.4 Correction of Errors in Resolutions. Following adoption of a Resolution by the Planning Board, the Planning Director shall have authority to note errors to the Resolution. Any such notes shall be promptly reported to the Planning Board and placed on the Consent Agenda.

4.12 Reconsideration of Resolutions.

- 4.12.1 Generally. The Planning Director or any Party of Record may petition the Planning Board for reconsideration of a Resolution within ten (10) days of the date of mailing of the Resolution for which reconsideration is sought. Requests for reconsideration shall be in writing, and shall be filed with the Planning Director. The Chairman may waive the filing deadline for good cause shown. Any Party of Record who requests reconsideration must serve a copy of its petition on every Party of Record. The written petition for reconsideration must enumerate and specify the alleged errors of fact or law, and must state fully the reasons for seeking the reconsideration based on mistake, inadvertence, surprise, fraud, or other good cause. These reconsideration provisions do not apply to non-regulatory matters.
- 4.12.2 Decision to Reconsider. Petitions for reconsideration will be brought before the Planning Board as soon as practicable. A motion to reconsider may be made only by a member of the Planning Board who voted in the majority of the decision that is subject to the request for reconsideration, and that motion will carry only if it is supported by a majority of the members of the Planning Board present and voting and all those voting on the motion had participated in the case or read the record of it. A decision to reconsider (a) does not require notice to the public or parties of record in any manner other than by publication on the Planning Board agenda, (b) may be taken without the appearance or testimony of the parties, and (c) is properly before the Planning Board based only on the written petition presented according to this Rule or a motion made according to this Rule without a petition. If the Planning Board votes to reconsider, the Resolution to be reconsidered shall become null and void.
- 4.12.3 Notice of Public Hearing on Matters Reconsidered. After a decision by the Planning Board to reconsider its decision, the Chairman will promptly schedule a public hearing in accordance with these Rules, and not less than ten (10) days prior to the public hearing on the matter to be reconsidered the Planning Staff will notify all Parties of: (a) the Planning Board's decision to reconsider; (b) the date of the hearing; and (c) a reasonable summary of the reasons for the reconsideration based on mistake, inadvertence, surprise, or fraud.

- 4.12.4 Hearing on Matters Reconsidered. The Planning Board will conduct a public hearing on the appointed date in accordance with Rule [4]. The scope of the hearing shall include the matters raised in the request for reconsideration and any other matters that the Planning Board deems to be related.

4.13 Planning Board Action By Consent Agenda.

- 4.13.1 Scope of Rule. The Planning Board may act without a public hearing to adopt any number of the following items consolidated for its consideration into a Consent Agenda:

- a. To approve, with or without conditions, an Amendment to a previously approved plan if the proposed Amendment and any conditions to it are supported by Planning Staff and are unopposed by any Party of Record.
- b. To adopt the formal resolution memorializing a Planning Board Action as required by Rule [4.11].
- c. To approve and adopt a Record Plat of subdivision according to Section 50-8 of the Subdivision Regulations and Rule [4.15].

- 4.13.2 General Provisions. There will be no public testimony and no debate or discussion by any member of the Planning Board regarding any item on the Consent Agenda for Amendments, provided that a member of the Planning Board may seek clarification regarding a Consent Agenda item from the Planning Staff. The Planning Board shall act on any items on the Consent Agenda upon a single motion for approval supported by a vote in the affirmative by a majority of the members of the Planning Board present and voting; provided that Planning Board members may not vote on a resolution if they did not participate in, or review the record of, the underlying Planning Board Action. The vote to adopt a motion to approve the Consent Agenda constitutes the approval and adoption of each item included just as if it had been acted upon individually. If any Consent Agenda is not approved by the Board, each item included on it is deemed severed and must be considered separately as otherwise required under these Rules.

- 4.13.3 Abstention from Certain Items. A Planning Board member may abstain from the vote on any item included on the consent agenda. The abstaining member should state on the record his or her reason for abstaining (including because the member was absent during the public hearing when the Planning Board considered or voted on the item). A Planning Board member's abstention under this Rule does not require severance of the item for separate consideration unless the number of members abstaining results in the absence of a quorum.

- 4.13.4 Removal of Items from Consent Agenda for Hearing. Any item proposed for action by Consent Agenda must be removed from that agenda at the request of any member of the Planning Board. Any Person may request that an item be removed from Consent Agenda, but items will be removed only at the request of Planning Board members. Prior to taking up a motion for approval of any Consent Agenda, the Chairman will entertain the request by any member of the Planning Board to sever any item from consideration in connection with that agenda. Upon a request, the item shall be removed from the Consent Agenda, and the Board may act on the matter, or, if appropriate, schedule a public hearing.

- 4.13.5 Public Notice of Proposed Amendments on the Consent Agenda. Not less than ten (10) days prior to the public meeting during which the Planning Board considers any Consent Agenda for Amendments, the Planning Staff will provide written notice of the date scheduled for such consideration of each Amendment. The Planning Staff will provide

the written notice required for this purpose by website or other publication readily available to the public and by regular mail addressed to the last known address of the Applicant.

4.14 Consent Agenda for Record Plats.

4.14.1 Each Record Plat appearing on the Consent Agenda must be accompanied by a Certificate of Compliance made by the Applicant, together with a brief Planning Staff Report to (a) confirm that the Staff has reviewed the Application for Record Plat and that it conforms to the requirements of any applicable Preliminary Plan of Subdivision, Certified Site Plan, and/or all other applicable regulations; and (b) express an unqualified Staff recommendation for approval of that Final Plat.

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

4.15 Final Action on Resolutions and Record Plats.

4.15.1 The adoption of a Resolution, which becomes effective as of the date of its mailing to all Parties, constitutes the final Planning Board action, and begins any period of appeal, repose, or limitation applicable under law or in equity to the Planning Board Action taken.

4.15.2 The adoption of a Record Plat is effective on the date the Record Plat is signed by the Chairman. The adoption of the Record Plat constitutes the final Planning Board action, and begins any period of appeal, repose or limitation applicable under law or in equity to the Planning Board Action taken with respect to that Record Plat.



CHAPTER VI
MISCELLANEOUS REGULATIONS

6.15.1 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.

6.15.2 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.

6.15.3 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.

65.4 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.

ATTACHMENT 2

DRAFT RESOLUTION NOT ADOPTED

MCPB No. 07-____
Rules of Procedure
Hearing and Discussion Dates:
September 28, 2006
November 9, 2006
November 30, 2006
January 25, 2007

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, the Montgomery County Planning Board ("Planning Board") of the Maryland-National Capital Park and Planning Commission (the "Commission") conducts public hearings in regulatory matters according to rules of procedure that it adopts from time to time, and is often guided by its rules of procedure in the conduct of hearings in non-regulatory matters; and

WHEREAS, the Planning Board has conducted hearings, received extensive written public comment, and held discussions with its staff concerning revisions to its rules of procedure; and

WHEREAS, the Planning Board has determined that the adoption of revised rules of procedure would benefit the public, applicants, and the Board; and

WHEREAS, the Planning Board is authorized to adopt or amend its rules of procedure, subject, for certain purposes, to approval by the County Council;

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Board hereby adopts the attached Rules of Procedure, which, effective January 26, 2007, apply to, and supplant any other rules previously adopted by the Planning Board applicable to, the Planning Board's conduct of hearings with respect to any Application for Project

Approved as to
Legal Sufficiency: _____

M-NCPPC Legal Department

Plan,¹ Preliminary Plan of Subdivision, Site Plan, Record Plat, Special Building Permit, Forest Conservation Plan, Water Quality Plan, or any Amendment thereto; and any matter of alleged Violation (as defined in the adopted Rules of Procedure).

¹ These Rules of Procedure are adopted by this Resolution in compliance with any requirement of Section 59-D-2.3 of the Zoning Ordinance that public hearings with respect to Project Plans be conducted "under such rules as the planning board shall, from time to time, establish by resolution and publish."